MILITARY AID TO THE CIVIL POWER

Hewett

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TO THE

CIVIL POWER

THE GENERAL SERVICE SCHOOLS
FORT LEAVENWORTH, KANSAS
1925

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Introduction

This volume, prepared for The General Service Schools, Fort Leavenworth, Kansas, by Major Cassius M. Dowell, Infantry, United States Army, while a member of the Judge Advocate General's Department, is designed to serve as a practical guide for officers of the Army of the United States in administering the Laws of War, and in the application of correct legal principles to situations involving Military Government, Martial Law, and Domestic Disturbances. It does not purport to exhaust the whole law on these subjects. Text-writers have already performed that task. It does attempt, however, to extract the salient principles involved and to give them practical application in concise and usable form.

Both Military Government and Martial Law have well defined positions in the field of International Law. The former is substituted for the laws theretofore in force in the enemy's territory occupied by our military forces; the latter, on proper occasion and to a limited extent, is substituted for the laws of our own land. In Domestic Disturbances, on the other hand, the employment of federal military aid does not displace the laws of the land, but *sustains* them by brushing aside interference with their administration by the proper State or Federal civil officials. Much confusion will be avoided if this distinction is kept in mind.

The Laws of War find application, more or less limited at times, throughout the entire field of active military operations.

Only so much of the general subject of International Law has been presented as was deemed necessary to furnish a setting for the specific subjects treated.

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CHAPTER I

International Law

(*Perspective*)

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SECTION I

General Survey

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1. DEFINITION.—International law embodies those principles and rules of action which are acknowledged by civilized states as controlling in their relations with each other.

2. OBJECT.—The object of international law is the regulation of international intercourse and the avoidance or mitigation of the miseries of war.

3. KINDS.—The law of nations may be considered as of three kinds: *general, conventional,* and *customary.* The first is universal, is established by the general consent of mankind, and binds all nations. The second is founded on

express consent, is not universal, and binds only those nations which have consented so to be bound. The third is founded on *tacit* consent, and is obligatory on only those nations which have adopted it.

4. ORIGIN AND NATURE.—*a*. The law governing intercourse between nations came into being by a blending of moral principles with positive law and customs as found in the jurisprudence of nations and their practices. The part based upon moral principles came from the law of nature, the remainder largely from the Roman civil law. It can not be stated just when modern international law began, but it is known that it first assumed definite form in the 16th and 17th centuries during which period Grotius, the most illustrious of a number of contemporary writers in this field, published his great work *De Jure Belli Ac Pacis*. (See Chap. II, pars. 12 and 13.)

b. International law denotes something more than the positive legislation of independent states. It is a body of obligations which, in a sense, is independent of and superior to such legislation. Compliance with these obligations is a prerequisite to the admission of nations to full and equal participation in the intercourse of civilized states.

5. HOW ASCERTAINED AND ADMINISTERED.—*a*. As a part of the law, the rules of international law must be ascertained and administered by courts of justice of appropriate jurisdiction as often as questions of right depending on those rules are duly presented to such courts for determination. As with municipal law, the rule applicable to a particular case may often be uncertain and difficult of ascertainment. Recourse is had to authoritative writers on the subject, to the provisions of treaties disclosing consensus of public opinion, to the laws and decrees of individual states regulating international tribunals, and to the judgments of prize courts and of ordinary municipal courts purporting to be declaratory of the law of nations. It is often found in mere usage. To ascertain that which is unwritten, we resort to the principles of reason and justice. The difficulty lies in the fact that these principles will be differently

understood by different nations under different circumstances.

b. In this country, intercourse with foreign nations and the policy with regard to them is placed by the Constitution in the hands of the federal government, and the decisions of the central government upon these matters are, therefore, binding upon its citizens. No statute or decision of one or two nations, however, can create obligations for the whole world, for the law of nations is founded upon the consent of civilized communities.

c. One rule governing the construction of our acts of Congress is that they ought never to be construed as violative of the law of nations if any other possible construction remains.

d. Broadly speaking, the principles of international law are enforced by international public opinion.

6. States Subject to International Law.—*a.* Formerly, the states that were and those that were not subject to international law were classified as Christian and non-Christian, respectively. This was due to the fact that international law grew up in Christian Europe. States are now admitted to the family of nations regardless of religious belief. By the Treaty of Paris in 1856, Turkey, was expressly "admitted to participate in the advantages of the public law and system of concert of Europe," and by the treaties of July and August, 1899, Japan's position as a fully independent sovereign power was assured. These states were admitted to the "circle of law-governed countries" because they so conducted themselves as to convince the Christian nations of their positive acceptance of the principles of international law in their entirety. Japan, for instance, in 1870, during the war between France and Germany, issued a proclamation of neutrality. In 1886, the Emperor of Japan formally adhered to the Geneva Convention. In 1887, the rules of maritime law embodied in the Declaration of Paris of 1856 were, by imperial decree, declared to be in force in the Japanese Empire. In 1894, during the war with China, a law was promulgated in Japan for the

organization of a prize court, and such a court was established at Sasebo. These acts, as above stated, convinced the civilized nations as to the attitude of Japan toward international law and gained her admission into the family of nations.

b. All the civilized states of the earth have now adopted the principles of international law, and even the semi-civilized or barbarous states are compelled to conduct both their internal and external affairs with a certain regard for the governments and peoples of other states. As aptly expressed by Lawrence in his admirable work on international law, "they cannot act as if they were alone in the world, for the simple reason that they are not alone."

7. INTERNAL QUALIFICATIONS FOR MEMBERSHIP.—If the government of a state is capable of securing at home the observance of rightful relations with other states, the demands of international law are satisfied. Such law has no concern with the form, character, or power of the constitution or government of a state, the religion of its inhabitants, the extent of its domain, or the importance of its position and influence in the commonwealth of nations.

8. SOVEREIGNTY AND INDEPENDENCE.—*a.* These terms are not quite synonymous. A state may be part-sovereign, but never partially independent. Its sovereign existence begins with its recognition of other powers; that is, from the time they accredit ministers to it, or conclude treaties with it, or in some other way enter into such relations with it as exist between states alone. Each power judges for itself whether a community claiming to be recognized really possesses all the necessary requirements, and especially whether it is likely to live. The judgment of the recognizing state respecting these matters is, of course, not always sound. That of our own country with reference to Mexico is an example. In a special message to Congress on May 15, 1856, President Pierce observed that five successive revolutionary governments had made their appearance in Mexico in the course of a few months, all of which had been successively recognized by the United States.

d. The independence of a state may be self-asserted and maintained, as in the case of the United States and other great powers; or it may be guaranteed by one or more states severally or jointly, as in the case of Switzerland; or other contracting parties may agree among themselves to respect the independence and territorial integrity of another state, as was the case of the Ottoman Empire under the Treaty of Paris of 1856. This last is not a guarantee.

9. LIMITED SOVEREIGNTIES.—*a.* These range all the way from protected states and those which are within spheres of influence, down through colonies, protectorates, suzerainties, mandates, and dependencies, to the domestic dependent nations of Indians in the United States. All except the last may be described as part-sovereign for the reason that their domestic rulers in dealing with external affairs find themselves more or less restricted in the exercise of rights of control by some external power. This external power is usually the government of some external state, but this is not always the case. The city of Danzig, for instance, is now a free city under the protection of the League of Nations.

b. Strictly speaking, and contrary to popular conception, the term *protectorate* includes the protecting power as well as the protected state. For example, the Republic of San Marino, an enclave under the "exclusive protective friendship" of Italy, is popularly termed a protectorate, but the protectorate actually consists of both Italy and San Marino.

c. A *suzerainty* is practically the same thing as a protectorate except that at times it may be only nominal, as was the case of Bulgaria while it was under the suzerainty of Turkey from 1878 to 1908. The dominant state is called a *suzerain.*

d. The terms "protectorate" and "suzerainty" are both so indefinite and variable in meaning, and are otherwise so unsatisfactory, that they are carefully avoided in diplomatic papers.

e. The term *colony* does not necessarily denote the absence of international personality. As explained by Professor Winfield in his recent revision of Lawrence's *International Law* (p. 63),

> "Recent events have made it no longer possible to dismiss the British self-governing dominions, Canada, Australia, New Zealand, and South Africa as colonies which are merely part of the British Empire and possess no international personality of their own. And the same applies to India, which, like these dominions, was separately represented at the Peace Conference after the great war. Moreover, all became original members of the League of Nations, with representatives separate from that of Great Britain in the Assembly of the League. Hence * * * they have become members of the 'organized Family of Nations,' and this marks a wide difference from their pre-war position."

f. The term *mandate* was introduced into international law by the Covenant of the League of Nations. It was coined to describe the relationship existing between certain overseas dominions lost by Germany during the World War, which were inhabited by backward peoples, and the advanced nations to whom the tutelage of those backward dominions was entrusted. The guardian nations are called *mandatories.* They perform their duties on behalf of the League of Nations and report annually to the Council of the League.

g. The status of Indians in their allotted territories is marked by peculiar and cardinal distinctions which do not exist elsewhere. They can not with strict accuracy be denominated foreign nations, for our government asserts title to their lands independent of their will when their right of possession ceases. They and their territory are considered by foreign nations, as well as by ourselves, as being so completely under the sovereignty of the United States that any attempt to acquire their lands or to form a political connection with them would be considered by all as an invasion of our territory and as an act of hostility. Our draft machinery reached out and effected the registration of Indians in their respective territories during the World War. Congress has by legislation asserted criminal jurisdiction over them respecting certain crimes, and our government exercises the right of eminent domain within their ter-

ritory in the usual way. Yet they are distinct communities each occupying its own territory, with its own tribal governmental organization, marriage laws, and real estate laws, also criminal laws punishing with death.

h. In 1894, Sir Julian Pauncefote, British Ambassador to the United States, complained to our State Department that certain British subjects had been unjustly removed by Choctaw Indians from their territory. The reply of Mr. Adee, our Acting Secretary of State, was that

> "The Choctaws are not citizens of the United States, but constitute a separate nation, with its own form of government and laws, existing within the borders of the United States under and in accordance with treaty stipulations. Those people who go into that country must be held to have done so with full knowledge of those treaties and of the Choctaw laws, and must accept the consequences if they are found to be there without proper authority."

i. An Indian born on an Indian reservation, even though he later separate from the tribe and live among white people, is not a citizen of the United States by virtue of the fourteenth amendment to the Constitution, for the simple reason that he was not born within the United States.* Nevertheless, the Indians are domestic subjects of our country, and the term "domestic dependent nations" has been coined by the Supreme Court of the United States (1 Peters, 1) as accurately describing their relationship. They are not members of the family of nations for the reason that they cannot deal in any way with any other power than the United States.

j. The States composing the American Union, though part-sovereign, are likewise not individual members of the family of nations for the reason that their foreign affairs are carried on solely by the central government.

10. SOVEREIGNTY AND TERRITORY.—*a.* Sovereignty and territory are not necessarily coexistent, nor are they inseparable. The Pope, though now deprived of all temporal power, is still recognized as a sovereign by many powers of

*By legislative enactment, approved 2 June, 1924 (43 Stat. 253), Congress finally conferred citizenship upon all non-citizen Indians born within the territorial limits of the United States.

the world which receive from him diplomatic representatives in the person of either a nuncio or legate, or possibly in some other capacity, and which powers also accredit to him certain diplomatic representatives. Our government does not participate in this, but abstains from interference or criticism, recognizing it as the right of other powers to determine such questions for themselves. Our diplomatic representatives abroad are advised that when the power at whose court the United States has a representative receives a representative from the Pope of higher rank than the representative of the United States, it becomes the duty of the latter to observe toward the Pope's representative the courtesies and formality of first visit prescribed by the conventional rule of intercourse and ceremonial, in accordance with the customary precedence of diplomatic agents.

b. The League of Nations has an international entity distinct from the several states of which it is composed. It is not, strictly speaking, a sovereign body, yet we have seen that it exercises a protectorate over the Free City of Danzig. It also governs the Saar Basin through a Commission. It thus exercises certain rights normally exercised only by sovereign states, yet it has no territory peculiarly its own.

c. Military occupation, of which we shall learn more later, is still another situation which shows clearly that territory and sovereignty are separable. When Castine, Maine, was in the hands of the British in 1814-1815, the sovereignty of the United States thereover was suspended, but the territory of the United States was not actually diminished. Again, when we occupied Tampico in 1847, our sovereignty was extended thereover but our territory was not expanded. The place was still foreign. The law of nations merely prescribes that conquered territory is subject to be governed by the conqueror during his military possession. This may continue after the cessation of hostilities until stipulations contained in the treaty of peace have been complied with, or until conditions are such as to cause the conqueror to withdraw, voluntarily or otherwise, from the occupied territory.

11. Recognition of Sovereignty.—*a.* Recognition of sovereignty may be *express*, as by written or oral declaration, or *implied*, as by sending and receiving diplomatic representatives, entering into negotiations, etc. A state may be recognized as a sovereign state without being recognized as a member of the society of nations. Such was the case of Turkey prior to 1856, and such is still the situation respecting a number of Asiatic states.

b. The recognition of a new state born of an insurrection must not be confused with the recognition of an insurgent party as a belligerent. The recognition by European powers of the Southern States as belligerents during the Civil War did not amount to recognition of the Confederacy as a state.

c. Premature recognition amounts to an act of intervention, committed in favor of insurgents or of a conqueror. The recognition of the United States by France in 1778 was in reality an act of intervention. The recognition of Cuba by the joint resolution of Congress approved April 20, 1898, declaring the people of Cuba to be free and independent and directing the President to use the Army and Navy for the purpose of causing the withdrawal of Spain from the island, was a clear case of recognition amounting to intervention.

12. Recognition of Belligerency.—*a.* Recognition of belligerency, as above stated, differs from the recognition of the sovereignty of a state. Belligerency between already existing states is apparent and easily recognized; but in a case of insurrection, such as that of our Southern States during the Civil War, the magnitude which the political struggle must have attained before it will justify recognition of the insurgent faction as a belligerent is a rather difficult matter and may be determined only by the recognizing state. Such recognition involves such questions as the right of blockade, visitation, and search for and seizure of contraband articles on the high seas. It does not confer upon the community so recognized all the rights of an independent state, but it does grant its government and

subjects the rights and imposes upon them the obligations of an independent state in all matters relating to war. It gives them a recognized status which carries with it certain great advantages, such as the privilege of employing commissioned cruisers at sea, the opportunity to obtain loans and materials abroad, and the right to demand respect for their laws. Such recognition does not, however, inure solely to the advantage of the insurgents. The parent state gains the advantage of relief from responsibility for acts done in the insurgent territory, and the right to exert against neutral commerce all the powers of a party to a maritime war.

b. The recognition of belligerency may be withdrawn at the discretion of the state which granted it. Thus, on January 2, 1865, England withdrew her recognition of the belligerency of our Southern States. Spain did likewise on June 4, and France followed suit on June 22, of the same year.

SECTION II

Reactions Induced by Violation of Principles of International Law

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13. LOSS OF MEMBERSHIP IN THE FAMILY OF NATIONS. —A state which is unable or unwilling to conform to those international obligations which must exist between established governments of friendly states, or which disclaims the authority of international law, renders itself no longer entitled to be regarded or recognized as a member of the family of nations. Thus, in 1898, when the Congress of

Ecuador passed a law declaring, among other things, that no person, whether native or foreign, should have any right of indemnity for damages incident to its military operations at home in restoring public order, the United States promptly pronounced the statute

> "generally and substantially subversive of the principles of international law by which, and not by domestic legislation, the ultimate liability of governments to one another must be determined,"

and further declared that

> "by such a declaration of rules for the guidance of her conduct in international relations Ecuador had placed herself outside the pale of international intercourse."

14. Customary Procedure When A Conflict of International Rights Arises.—*a.* Sometimes the acts of an offending state are such obvious and unmistakable violations of the sovereign rights of another state that no explanations are asked for, and resort is at once had to forcible measures of redress. The customary procedure, however, is for the offended state to make known its cause of complaint to the offending state and demand that justice be done, the urgency of the demand and the amount or character of the satisfaction demanded always being proportional to the views of the demanding state as to the gravity and importance of the injury alleged to have been sustained.

b. When the case is clear and there is no dispute as to the facts, reparation by the offending state is usually made with the greatest promptness by acknowledging its error, disavowing the act or acts of its subordinate officials, and offering such action accompanied by such explanation and apology, as the situation seems to demand. If only a minor rule of little importance has been violated, the mere exchange of diplomatic notes is usually deemed a sufficient remedy. What at first appears to be an injury or insult may, upon further and more deliberate examination, be found to be merely a mistake, and not at all an act of malice or one designed to give offense. The circumstances may have arisen from unauthorized or unapproved acts of inferior persons, in which case such acts will almost invari-

ably be promptly disavowed by the government for which or in the name of which, such persons purported to act. In dealing with such questions, much depends upon the tact and moderation shown by diplomatic representatives. A little moderation, even if accompanied by considerable delay, will usually bring the offended party a just satisfaction, whereas rash and precipitate measures may often lead to serious consequences.

15. CONTROVERSIAL DISCUSSION.—If the case is not clear, and it frequently is not, a controversial discussion takes place, each state advancing arguments and citing authorities in support of that view which it holds to be in accordance with the demands of justice. These controversies are not usually settled at once. They may continue throughout a long period. That between England and the United States with reference to the right of search lasted more than fifty years.

16. MEDIATION AND ARBITRATION.—*a.* If the interested states seem unable to settle their differences in the customary way, they may resort to *mediation;* that is, they may refer the cause of difference to a disinterested power for decision or adjustment. The mediation may be asked for by the states themselves, or a third power may tender its good offices with a view to the maintenance of peace.

b. Sometimes, instead of the difference being referred to a disinterested power, it is referred to a tribunal composed of one or more persons. This is *arbitration.* A theoretical advantage of arbitration over mediation is that all suggestions of a mediator may be rejected by the litigant parties, whereas the decision of an arbitration tribunal to which the cause has been properly submitted is binding upon the parties concerned.

17. RETORSION AND REPRISALS.—*a.* If the dispute can not be settled amicably by the states themselves, and if neither mediation nor arbitration be resorted to, the next step may take the form of retaliatory measures known as *retorsion* or *reprisals.* Retorsion means merely the application by a state toward another state of the same rule of

conduct that has been applied by that state toward the other. Reprisals are not limited to like acts. They consist in the forcible seizure of property belonging to an offending state, or to its citizens or subjects, which may be found within the territory of the offended state or on the high seas. If the dispute is settled without war, the seized property is returned, but if war results it is condemned as prize.

b. Reprisals differ from retorsion not only in kind but in degree. Retorsion is resorted to when *imperfect* rights (as those depending upon the rules of comity) have been denied, whereas reprisals are resorted to when *perfect* rights (those depending upon statutory or treaty stipulation) are drawn into question, or when there has been an absolute refusal of justice. Reprisals are acts of violence and may be regarded by the state against which they are directed as amounting to a declaration of war. If war does not result, it is usually because such state regards the act as merely technical and manifests its willingness to redress the grievances of the offended state. Reprisals usually attain the desired ends without recourse to war, due in part to the fact that they are most frequently resorted to by powerful states against weak ones and very rarely by one state against another of greater or approximately equal strength.

18. Embargo and Pacific Blockade.—*a.* An embargo is the detention, by a state, of ships of commerce in some or all of its ports until the adjustment of an existing controversy. If the embargo is laid on the ships of the embargoing state it is called a *civil embargo;* if on the ships of another state, it is called a *hostile embargo.* The latter is a form of reprisal and follows the reprisal rule that, if war does not result, the ships are permitted to set sail as soon as the matter is adjusted, but, if war does result, the ships and their cargoes become prize.

b. A hostile embargo should be distinguished from a *pacific blockade* of the ports of an offending state, in which case force is displayed to such extent as not to permit vessels to depart thereform until the controversy is settled.

19. WAR.—The ultimate step by a state to redress its injury is the suspension of all friendly relations with the offending state and a resort to such acts of hostility as are authorized by the laws of war. International law has nothing to do with the inherent rightfulness or wrongfulness of war, or with what constitutes a just cause for war, the only check upon these being international public opinion. It does, however, come within its province to determine how war between civilized states shall be carried on, and with what formalities it shall begin and end.

SECTION III

*Effects of a State of War**

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20. EFFECT UPON BELLIGERENTS.—The principal effects of a state of war upon belligerents are as follows:

a. The belligerent states and their citizens or subjects are placed in a state of non-intercourse with each other.

b. Commercial intercourse between citizens or subjects of the belligerent states becomes illegal.

c. Each citizen or subject of one belligerent state becomes the *legal* enemy of every citizen or subject of the other.

d. Legal obligations arising out of contracts with the enemy's citizens or subjects, also partnerships and other business arrangements with them, are suspended during the continuance of hostilities.

e. Debts due the enemy's citizens or subjects are suspended during the war, but revive upon its termination.

f. Citizens of one belligerent state in the territory of the other may be required to depart or may be allowed to remain. The latter course is usually followed. Those ordered to go are allowed a reasonable time within which to remove their property. Those allowed to remain may be subjected to such special police regulation and

*The effects of a state of war really pertain to that subdivision of international law known as the *Laws of War*, a subject which is to be considered more in detail in the next chapter.

supervision as may be deemed necessary. The private property of those remaining is not confiscable so long as they conduct themselves properly.

g. Merchant ships of a belligerent in an enemy's port at the outbreak of war become prize. They were formerly allowed to depart with their cargoes and were allowed ample time to arrive at a home port or the port of a neutral. This rule was never followed by the United States, and it has now dropped into general disuse.

h. Treaties of alliance, of subsidy (obliging a state to furnish arms, ships, troops, money, or other aid), and of guaranty, made in anticipation of the war, come into effect.

21. Effect Upon Neutrals.—*a*. Strictly speaking, the relationship existing between two states at any time must be either that of peace or war. International law recognizes no intermediate condition. Neutrality is of comparatively recent growth. Among the ancients, war was the normal state of mankind. All nations participated in it, either as principals or allies. Had any state at that time attempted to compel respect for neutral rights even remotely resembling those pertaining to the neutrality of today, the belligerent against whom the attempt was made would have regarded it as an act of war. This state of affairs continued until about the close of the Middle Ages, at which time the modern idea of state sovereignty and territorial independence began generally to be recognized.

b. Today the status of neutrality is involuntary. It is imposed upon a non-belligerent state by the mere fact that war exists between other states with which it is at peace. Neutrality becomes operative upon the declaration of war or outbreak of hostilities, and is publicly assumed and made kno wn by publication by the neutral of a proclamation enjoining its citizens or subjects from participating in the operations of the war. War used to be declared with great formality in order that neutrals might be advised of its existence. This is not so essential in these days of rapid communication, for the fact that strained relations have arisen between states now becomes known at once throughout the civilized world. It is known when diplomatic intercourse ceases, when ministers are withdrawn, and when the armies and navies of the contending states are being mobilized and

placed upon a war footing. Nevertheless, the rule laid down by the Second Hague Conference was that hostilities "must not commence without previous and explicit warning, in the form of either a declaration of war with the reasons assigned for it or of an ultimatum with conditional declaration of war." This rule was violated during the World War by Germany, Austria, Turkey, and Bulgaria. However, regardless of whether a formal declaration of war is necessary between the contending states themselves, each is obliged to give notice of its intentions to its own citizens or subjects, and to neutrals. This notice is usually given by means of a proclamation which announces the date after which hostilities will be considered to exist.

c. With respect to the occupations in which the inhabitants of neutral states may be engaged at the outbreak of war, it is to be remembered in connection with the production, manufacture, or distribution of articles designed primarily for war uses that such articles, if found at sea *en route* to a hostile destination, become contraband and are liable to capture and condemnation by a belligerent. As to trade in articles *not* designed primarily for war uses, if carried on with certain ports against which a belligerent decides to exercise the right of blockade, any attempt to continue such trade after such right has been exercised would constitute a violation of the blockade, with attendant liabilities and penalties as prescribed by the law of nations or as stipulated in particular treaties. In all other cases, the undertakings of the inhabitants of neutral states are not legally affected or interrupted by the fact of war. With reference to the manufacture of contraband articles within neutral jurisdiction, Thomas Jefferson, then Secretary of State, made use of the following language in a statement to the British Minister on May 15, 1793 (III Jefferson's Works, pp. 558-560):

> "Our citizens have always been free to make, vend, and export arms. It is the constant occupation and livelihood of some of them. To suppress their callings—the only means, perhaps, of their subsistence—because a war exists in foreign and distant countries, in which we have no concern, would scarcely be expected. It would be hard in principle and impossible in practice. The law of nations,

therefore, respecting the rights of those at peace, does not require from them such an internal derangement of their occupations. It is satisfied with the external penalty pronounced in the President's proclamation—that of confiscation of such portion of these arms as shall fall into the hands of the belligerent powers on their way to the ports of their enemies."

The Supreme Court of the United States, in the case of The Bermuda (3 Wallace, 514), announced that

"Neutrals in their own country may sell to the belligerents whatever belligerents may choose to buy. The principal exceptions to this rule are that neutrals must not sell to one belligerent what they refuse to sell to the other, and must not furnish soldiers or sailors to either; nor prepare, nor suffer to be prepared, within their territory, armed ships or military or naval expeditions against either. So, too, except goods contraband of war, or conveyed with intent to violate a blockade, neutrals may transport to belligerents whatever belligerents may agree to take. And so, again, neutrals may convey, in neutral ships, from one neutral port to another, any goods, whether contraband of war or not, if intended for actual delivery at the port of destination and to become part of the common stock of the country or of the port."

d. The practice and attitude of nations is not to enact legislation prohibiting their citizens or subjects from trafficking in articles which may become contraband of war, but simply to regard such trade as carried on at the risk of those engaged in it. The law of nations exposes contraband-carrying ships and their cargoes to seizure and confiscation, and deprives persons engaged in such traffic of the right to look to their home governments for protection. Some continental writers claim that a certain amount of governmental regulation and interference in this respect is necessary, but the rule adopted by the Second Peace Conference at The Hague was that

"a neutral power is not bound to prevent the export or transit, for the use of either belligerent, of arms, ammunition, or, in general, of anything which can be of use to an army or fleet."

A similar rule was adopted respecting undertakings on land.

22. Effect Upon Hostile Territory Occupied by our Forces.—*a.* We have seen that international law has to do with the events leading up to war, with the manner in which the war shall be conducted once it is under way, and

with the formalities with which it shall come to an end. When hostilities cease, it is usually the case that at least one of the belligerents will be in possession of hostile territory which he may intend to hold either temporarily or permanently. The holding of the conquered territory pending the determination of its fate at the peace table, and thereafter as may be necessary to the proper disposition of such territory, is regarded a mere military occupation. Castine and Tampico have already been cited as examples of temporary occupation. A case of permanent occupation is that of California, with reference to which the authority and jurisdiction of Mexican officials terminated on July 7, 1846. On that day the United States forces took possession of Monterey, the capital of California, and soon afterwards occupied the principal portions of the country. The military occupation continued until after the treaty of peace (Guadalupe Hidalgo) in 1848.

b. The fact of military occupation causes the old civil government to cease, and it is not only the right but the duty of the conqueror to put a government in its place that will provide for the maintenance of civil order and for the protection of the rights of the inhabitants. He may put back practically the same old civil government, with such modifications as the military situation demands, or he may establish a new and completely different system. Just what would be appropriate under different situations will be taken up later in the chapter on military government. It should be emphasized at this time, however, that whatever form of government is established is that of the conquering state. In appearance, and for all practical purposes, the old government may be continued, but, in theory and in fact, there is an absolute break which transfers the source of the government to the conqueror. He merely adopts and imposes it as his own. During such period as may intervene before he announces his intention in this respect, the old municipal laws of the conquered territory, such as affect the private rights of persons and property and provide for the punishment of crime, are regarded as adopted and continuing in force until suspended or superseded.

c. On the occupation of New Mexico in 1846, General Kearney, commanding the American forces, at once instituted a provisional government over that territory. The validity of the courts and code of laws established in connection therewith was later upheld by the Supreme Court of the United States in an opinion which stated that they not only displaced and superseded every previous institution of the vanquished or deposed political power which was incompatible with them, but that they continued in force, even after the termination of the war, until expressly revoked or modified by direct legislation, the provisional government being regarded as exercising its power in the meantime through delegation by Congress.

23. PRIVATE RIGHTS NOT IMPAIRED BY CONQUEST.—*a.* War being only a relation of state to state, it follows that one belligerent who makes conquests in the territory of another cannot acquire more rights than were possessed by his predecessor. The right of conquest therefore cannot affect the property of private persons. The invaded or conquered state could not possess any right over such property, so the invader or conqueror cannot legitimately exercise any right over it. It has been held by the Supreme Court of the United States that, when New Mexico was conquered by the United States, it was only the allegiance of the people that was changed; their rights of property and their relations with each other remained undisturbed. Likewise, the same court held as to California that the rights acquired by individuals under the prior Mexican and Spanish laws were "consecrated by the law of nations." Of course, the acquisition must have been *bona fide*. A grant of lands in California made by the chief of an administration when he was in flight from the seat of government, and his cause about to be, as it was soon afterwards, completely overthrown, was not sustained.

b. Rights acquired and relationships entered into by individuals pursuant to the laws of a *de facto* government (the one actually in power, whether rightfully or wrongfully, for the time being) are valid after such government has ceased to exist, provided the acts which brought them

about did not have to do with the prosecution of the war. Thus is has been held that the Confederate States had no existence except as a conspiracy to overthrow lawful authority, so when their government was overthrown it perished totally, leaving no laws, no statutes, no decrees, no authority which could give support to any contract or act done in its service or in aid of its purpose, or which contributed to protract its existence; but as to other acts or contracts it is recognized that the supremacy of the Confederate government actually existed over certain territory, and that individual resistance to its authority at that time would have been both futile and unjustifiable. In the face of an overwhelming force, obedience in certain matters became a necessity and in the interests of order and duty. Of this character may be mentioned the preservation of order, maintenance of police regulations, prosecution of crimes, protection of property, enforcement of contracts, celebration of marriages, settlement of estates, transfer and descent of property, and similar kindred subjects. These were not invalid merely because the government which regulated them was in hostility to the Union. The existence of war did not relieve those within the insurrectionary lines from the necessity of civil obedience, nor destroy the bonds of society, nor do away with the civil government or the regular administration of the laws. These may indirectly or remotely have promoted the ends of the *de facto* unauthorized government organized to effect a dissolution of the Union, but they were nevertheless without blame unless entered into with the actual intent of furthering the invasion or insurrection.

c. The important fact to be gathered from this paragraph is that the government of the United States not only holds that individual rights derived from a duly constituted prior foreign government to which it has succeeded are "consecrated by the law of nations," even as against rights claimed under its own subsequent laws, but it has applied the same rule in the case of an insurrectionary government formed within its own borders.

CHAPTER II

The Laws of War

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SECTION I

Origin and Development

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1. Patriarchal Governments.—*a.* At some time during the primitive period of man's existence there came a time when he began to realize that, by giving up certain individual liberties and subordinating them to community interests, he would receive in exchange a greater degree of safety and a larger measure of happiness. He sought the most natural association available, and thus it was that men banded themselves together on the basis of family ties, thereby instituting the patriarchal system of government. The ruler was in all cases the old father, whose place was ultimately taken by his eldest son, whose place was in turn taken by *his* eldest son, and so on down through the family lineage.

b. After this fashion was born the earliest and simplest form of our modern civilized state.

2. Nomadic Tribes.—The next step after patriarchal governments consisted in the alliance of several closely related groups or families for mutual protection against similar groups. In those days these groups wandered about seeking pasturage for their herds and flocks, and what they found was theirs if they could take it by physical force from less powerful communities. This was the beginning of war. It consisted in fighting other tribes to gain the real or supposed necessities of life. The vanquished tribe was usually effaced from the earth. The men were killed and the women and children either sold into slavery or used as was considered would best serve the interests and desires of the conqueror. All the captured herds and pastures and other property passed absolutely to the victor. Struggles of this kind were the normal existence.

3. The Stabilizing Influence of Agriculture.—*a.* As tribes multiplied, the pastures grew more and more scarce. The wanderer then discovered that he could plant and grow things that were good to eat and fit to feed his flocks, and that many of his other needs could be supplied in this way. He found this to be much easier and more peaceable than roaming about and fighting hard for what he got. Agricultural pursuits thus had their dawn. But the

pursuit of agriculture means a settled existence. It is inconsistent with nomadic life. The latter therefore waned, and fixed communities became the rule along the river valleys where the soil was fertile and water was plentiful. The need for fighting strength was no longer so great as in the nomadic days, being thereafter necessary principally for defense against the few wanderers that still remained, and against encroachments upon their land by neighboring settlements.

b. The early form of government was always of the autocratic kind, the ruler continuing individually to direct the whole of his people's lives so long as it was possible for him to know all of his subjects by name. His commands were absolute, his will law, and his sense of right and wrong the sole court of justice to which appeal could be made.

4. The Growth of Cities.—*a.* A more concentrated form of human existence, where comparatively large numbers of persons grouped themselves together within a comparatively small space, did not come into being until ideas of manufacture and trade began to develop. If a member of a tribe which had ceased its wanderings and settled down to agricultural pursuits had more of one kind of an article than he could use, he found it to his advantage to exchange this surplus for something of which he had less than sufficient to meet his needs. This involved knowing with whom such an exhange could be effected most advantageously, and this in turn involved much travel in search of customers. It was therefore soon found to be more convenient to have a common meeting ground where all who had surplus products might repair and barter as they desired. The next discovery was that if certain persons would remain permamently at the common meeting place to take this surplus and give what was desired in return, it was still more convenient than it was for each to stay at the meeting place waiting for a person to come along who desired exactly what he had to dispose of and who would give him exactly what he wished in exchange therefor. Then, as mankind living in the agricultural state began to think of improving his living con-

ditions, he found that the produce of his flocks and herds, as well as some forms of the produce of his fields, could be made into better clothing if he sold it to someone who had better facilities than himself for making clothing. He therefore took his raw material to the manufacturer, who, naturally following the main sources of supply, grouped his plants at the trading centers, and exchanged it with him for his better manufactured product; or he sold it to some middleman who made it his business to handle the manufactured product and deal directly with the consumer.

b. So it was that cities were but the natural result of the growing complexities of human existence consequent upon the abandonment of nomadic forms of life, and so it is that trade and manufacture furnish us with the immediate grounds for understanding the inception and growth of cities.

c. Sometimes one city with its surrounding country would be all that one particular tribe would develop. Sometimes a tribe would develop several cities, which, with their surrounding country, would constitute a kingdom, the latter extending its power and authority throughout the circumscribed territory.

5. The Development of Commerce.—The growth of trade did not stop with the development of cities, or even with combinations of cities formed or united into kingdoms. Trade begat the desire for more trade, not only from within but also from without, and this engendered the spirit of commerce together with that form of selfish enterprise known as trade conquest, so common today. The immediate result was the establishment of trade routes through territory not under the jurisdiction of the city or kingdom. The opening and shutting of these ancient trade routes, an interesting subject all by itself, caused more of the great wars of history than any other one thing. Trade expansion, particularly foreign trade expansion, meant the same in those days that it does today—power, wealth, prosperity, comfort, influence —while the loss of trade, due to the closing of advantageous trade routes, or due to other eventualities, meant exactly the reverse and was a thing *par excellence* to fight about.

6. The Whole World as One State.—Rome, after the downfall of her rival, Carthage, and when she had arrived at her glorious estate as mistress of the known world, marks the culmination of this period of the race's development which began back in the dim twilight of the Earth's being, far in front of historic times. Here we have a monster state of the highest organization and attainment, surrounded by examples of every stage of development through which the human race had passed, and ruling them all as their absolute master.

7. War's Part in the Evolution.—War played a gigantic part in this evolution, and we may say that, up until the time when Rome reached her zenith, war was the natural state of mankind. In the words of Sir Henry Sumner Maine, "war appears to be as old as mankind, but peace is a modern invention." Through all the thousands of years that it took to produce the Roman flower of civilization, little had been done to alleviate the miseries caused by war. The rule continued the same, with a few exceptions presently to be noted, that the vanquished with all his family and goods became the absolute property of the conqueror, who might kill or enslave or use or destroy, as his own interests seemed to require. Whenever the converging interests of communities brought on war, the weaker could expect only extinction of race and confiscation or destruction of property. Fighting without quarter was the rule. Pillage, rape, and general destruction were as much the component elements of war as were the clashes of hostile armies in the field.

8. Early Rules Governing Warfare.—*a.* Certain rules of warfare were recognized from very early times and were followed more or less closely. For instance, about the time of Alexander's greatest power, the Hindus in conducting their wars studiously refrained from injuring the husbandman or his crops. The Greeks and Romans made use of formal declarations of war. Sometimes they released their prisoners on parole or for ransom. They also appear to have denounced acts of violence against women and children.

b. There is said not to have been any great difference between the character of the warfare waged by the armies of the later Roman Empire and that of the Germanic tribes which overran it. The latter apparently had reached the same stage as the former with respect to abiding by certain rules the general tendency of which was toward the alleviation of the horrors of war.

9. THE BEGINNING OF THE LAWS OF WAR PROPER.—*a.* The Germanic invasion of the Roman Empire was followed by the Mohammedan invasion of Europe. The lawbook of the Mohammedans was the Koran, but this was supplemented by the decisions of Mohammed and his successors. To meet the needs of the different peoples whom the Mohammedans conquered, this body of law was codified and the result bears tribute to the brilliant line of jurists who accomplished it. That portion covering the laws applicable to a state of war is of considerable magnitude and is the first example we have of a systematic code of written laws of war.

b. According to this code, war was to be made once a year on the unbelievers, on the unorthodox, and in tributary countries which had failed to live up to their obligations. There were injunctions against the use of incendiary projectiles, cutting trees belonging to the enemy, intercepting his water supply, and the poisoning of wells and water courses. The killing of women and children or the insane, and the mutilation of prisoners without orders, were all absolutely forbidden. However, minors of both sexes, and women, still became the immediate and absolute property of their captors. The disposition of adult male prisoners was reserved to the commander. They might be sent back, released on ransom, exchanged, or reduced to slavery. The giving of food and drink to prisoners was compulsory. It was recommended that they should not be tortured, and their heads were not to be carried from the field of battle. The actual practice of the Mohammedans was not always up to the standard of their code, but their method of conducting warfare along these lines compared favorably with that of other nations of the period.

10. The Period of Abasement.—The great influx of barbarians into Western Europe in the fourth and fifth centuries, known as the "wandering of the nations," introduced what was, perhaps, the lowest estate to which mankind has descended since the beginning of recorded history. The period is distinguished by the abasement of everything high and noble in the existence of organized society, and by the complete obscuration of the higher mental and moral nature of mankind. The lawlessness of the sea even eclipsed the disregard of all law that prevailed on land. Piracy was common, and truces and treaties of peace had but little effect on maritime hostilities. As we shall see, however, this was only the darkness just preceding the dawn.

11. Influence of Christianity and Chivalry.—The reign of Charlemagne had an important uplifting influence. After his death there was a partial relapse to the barbarities of former times, but the restrictions which the Church and the kings of France endeavored to place on private wars of the still later period tended strongly to reinstate the more humane conditions. The practice of reprisals still remained widespread, but the enslavement of prisoners was quite generally giving way to ransom. Formal declarations of war came to be recognized as obligatory. Christianity and the development of chivalry had a profound influence in ameliorating the conduct of war generally. Profession of the principles of the Christian religion, respect for sacred things, honesty, loyalty, fairness, and honor were essential qualities of the true knight, and they were so drilled into the aristocracy of the time that they became ingrained in all that was best of the life of Christian Europe. Piracy, however, had not by any means been stamped out at the close of the fourteenth century.

12. Change From Medieval to Modern Times.—Among the things which marked the change from medieval to modern times was the intense interest that began to be taken in everything the ancients had to teach of the art of war. Especially in England, Spain, and Italy, there was an outpour of literature treating of all manner of military sub-

jects. Some important works on the laws of war appeared during this period, the most notable being that of Grotius, a Hollander, published in 1625. (See Chap. I, par. 4.)

13. Birth of the Doctrine of Military Necessity. —The fundamental principle laid down by Grotius was that "measures that are necessary to a lawful end, we have a right to use in war." In other words, *useless* injury is *unlawful.* Here we find introduced into the laws of war for the first time the great doctrine of *military necessity.* It means that the nations of the earth go to war for the purpose of accomplishing some definite end, not for the destruction of their enemies, and that only those things are lawful in the conduct of war that are necessary to attain the object or end of the war. This marks a tremendous advance beyond the laws of war of the time of the Romans, and also beyond the doctrine announced by Machiavelli, as late as 1513, to the effect that ordinary moral rules did not apply in matters of state.

14. The Decline of Pillage.—Passing on, we find a material advance made in the conduct of war when Gustavus Adolphus during the Thirty Years' War substituted contributions for pillage. Theretofore, the practice of pillage had been quite general. Contributions were found to be preferable because they were more convenient for both the conquered and the conqueror, and for the further reason that they relieved the non-combatants of some of the horrors of war by permitting the burden to be distributed where it could be borne with the least hardship.

15. Views of the Revolutionary War Period.—The eighteenth century saw the death of the practice of ransom and the birth of provisions for the better care of the sick and wounded. During the war for American Independence, Great Britian promulgated the following as recognized laws of war:

a. An army which has occupied the country of an enemy may demand provisions there and levy contributions and, to force the inhabitants to satisfy these demands, may resort to military executions; that is, ravage and destruction.

b. When the enemy, being in his own country, finds it to his advantage to prolong the war and evade coming to action, it is

permissible to ravage the country in his presence to make him expose himself in attempting to protect the country.

c. When, in war, one is not able to destroy the adverse party or lead him to reason without reducing his country to distress, it is permitted to carry distress into his country.

d. When the inhabitants are themselves the principal parties to the war, which happens in the case of a revolt or a rebellion, they are themselves the principal objects of hostilities which one is under the necessity of directing against them to attain the end of the war.

16. Modification of the Doctrine of Conquest.—The principal effect of the Napoleonic Wars on the laws of war was in connection with conquest. The old doctrine was that the ownership of invaded territory, like that of other forms of property, passed without qualification to the belligerent who had taken the territory securely into his possession. To constitute secure possession, the end of the war was not essential. It was presumed that a belligerent always intended to appropriate all the territory that he could lay his hands on. This presumption was shattered by the French Revolution, and a renunciation of wars of conquest was embodied in the Constitution of 1791. Thereafter it became settled law that the ownership of territory is not gained by military occupation but by terms of the subsequent treaty of peace.

17. The Declaration of Paris, 1856.—*a.* All of the early efforts for the amelioration of the hardships of war were contained in treaties that were entered into by the belligerents, usually with reference to a single battle. There are records of hundreds of such treaties. Only rarely did they include the duration of the war. The first real step towards the codification of the laws of war, a step which had been advocated for many years, came with the Congress which assembled at Paris in 1856 at the end of the Crimean War. The result was the "Declaration of Paris," signed by the representatives of England, France, Russia, Prussia, Austria, and later by Turkey and Sardinia. The declaration was quite generally accepted by the other powers. Its four articles were:

(1) Privateering is and remains abolished.

(2) The neutral flag covers enemy goods, except contraband of war.

(3) Neutral goods, except contraband of war, are not liable to capture under the enemy's flag.
(4) Blockades, to be binding, must be effective.

b. The declaration marked a complete revolution in the maritime policy of Great Britain, which nation had theretofore insisted on her right to seize enemy property on the high seas, whether in neutral ships or not, on the grounds that to permit it to be otherwise would cripple her power at sea by allowing enemy commerce to be carried on in neutral ships without molestation.

c. The United States, on account of the strict prohibition against privateering, refused to sign the Declaration of Paris unless the articles were so changed as to exempt all private property at sea from capture, except in cases of contraband or where the property was involved in the violation of an effective blockade.

d. The second and third of the articles above mentioned were departed from by Germany during the World War. France and Great Britain departed from the second by way of retaliation. These rules, nevertheless, still have behind them the express consent of most civilized states and the tacit consent of the remainder.

18. General Order No. 100, A.G.O., 1863.—This order is entitled *Instructions for the Government of the Armies of the United States in the Field*, and is probably the most important of all documents on the subject of the rules of land warfare. It was prepared by Professor Francis Lieber in 1863, and not only served as our guide in the conduct of war continuously from that time until the publication of our War Deparment manual on the Rules of Land Warfare in 1914, but formed the basis, to a much greater extent than is generally recognized, of the rules subsequently established by the Hague Conventions.

19. Contribution of Our Civil War Period.—*a.* Aside from General Order No. 100, just above mentioned, the net contribution of our Civil War period to the laws of war consists in the confiscation and sequestration acts of the Federal and Confederate Congresses, respectively, the cap-

tured and abandoned property acts of the Federal Congress, and the numerous decisions of our Supreme Court on questions of blockade, contraband, seizures, and the principles of military government.

b. The conduct of the war by the forces under General Grant coincided exactly with the second, third, and fourth principles stated in paragraph 15, *supra.*

20. THE EARLY GENEVA CONVENTIONS.—*a.* The efforts of the Geneva Society of Public Utility resulted in the assemblage, in a semi-official conference, of military and medical men, about half of whom were representatives of the war departments of their respective governments, for consideration of the amelioration of the condition of the sick and wounded in warfare. The first conference sat at Geneva in 1863. Its work consisted of a decision to create Red Cross societies, and the expression of a wish for the neutralization of the sick and wounded in war and of the persons and property connected therewith. The conference was not a diplomatic one, but it invested the Geneva Committee with the power to take steps toward the calling of a congress which should represent the governments themselves. This was done, with the result that delegates from sixteen countries met at Geneva in August of 1864. At this meeting a treaty was signed embodying the general views expressed by the conference of the preceding year. This treaty is known as the "Geneva Convention," and now binds practically all the outstanding powers of the world.

b. Additional articles were adopted by a conference which met in 1868, but they were never ratified. They were observed by France and Germany during their war of 1870-1871, however, and by the United States and Spain during the Spanish-American War.

21. THE DECLARATION OF ST. PETERSBURG (INTERNATIONAL MILITARY COMMISSION), 1868.—*a.* Almost simultaneously with the appearance of the Additional Articles of 1868 above mentioned, the famous Declaration of St. Petersburg was drawn up. In 1863, a bullet intended to destroy caissons of ammunition, had been introduced into the

Russian army. It was constructed, like the bullet used in hunting the tiger and elephant in India, so that it would explode on coming in contact with hard substances. Four years later another bullet which would explode on coming in contact with the human body had been proposed to the Russian government. The Russian Minister of War, being strongly of the opinion that the use of such bullets would unnecessarily increase the miseries of war, proposed to Emperor Alexander that the use of explosive bullets either be renounced completely or limited to those which would explode by means of a percussion cap on contact with hard substances. The idea of the Minister was approved by the Emperor who, to give it wider application, convened a conference of the powers at St. Petersburg.

b. The labors of this "International Military Commission," as the conference styled itself, resulted in a declaration, acceded to by most European states, to the effect that the progress of civilization should have the effect of alleviating as much as possible the calamities of war; that the only legitimate object of accomplishment of war was to weaken the military forces of the enemy; that for this purpose it was sufficient to disable the greatest possible number of men; that this object should not be exceeded by the employment of arms which uselessly aggravated the sufferings of the disabled men or rendered their death inevitable; that the employment of such arms would be contrary to the dictates of humanity; and that, therefore, the contracting parties engaged themselves to renounce the employment by their troops in war of any projectile of less than 400 grammes in weight (about 13½ ounces) which was either explosive or charged with fulminating or inflammable substances.

22. The Brussels Conference of 1874.—In 1874, the President of the Society for the Amelioration of the Condition of Prisoners of War, which had been formed at Paris in 1872, requested that delegates be sent to a conference to be held in Paris for the purpose of considering means for the alleviation of the condition of prisoners of war and to

prepare the way for an official congress which should formulate an international treaty on the subject. Alexander II of Russia, who had given orders that a project be drawn up which should cover practically the entire war practice on land, took up the suggestion and arranged to have the movement carried on by the Russian government. The result was the Brussels Conference of 1874 which was composed of representatives from nearly all of Europe. The conference took up the project submitted by the Russian government and modified it considerably. An effort was made to abolish contributions, but without success. It was finally decided that requisitions and contributions should be limited to the necessities of the case. The British government refused to ratify the resulting declaration, objecting to certain articles concerning the use of irregular troops. The meeting disclosed two opposing views as to the kind of troops it should be permissible to use in war. States maintaining great military establishments desired to make it unlawful for an invaded country to use irregular forces or to organize *levees en masse* among the inhabitants. States maintaining small regular establishments held out just as strongly for almost any kind of patriotic resistance to invasion. While the conclusions of this conference never reached official recognition, the discussion bore great weight in the later Hague Convention which will be referred to presently. In fact, these subsequent Hague Conventions did little more than adopt the principles enunciated by the Brussels Conference as far as the latter went.

23. The Institute of International Law, 1880.—The Institute of International Law, which carried among its members some the leading international lawyers of the world, met at Oxford in 1880 and prepared a *Manual of the Laws of War on Land* which was somewhat of a modification of the Brussels Conference. Their labors cannot be considered as lost (see next paragraph), but the code as such was never adopted by any nation.

24. The Hague Conference of 1899.—*a.* Shortly after the close of hostilities between the United States and Spain, the Czar of Russia issued an invitation for a confer-

ence "which should seek the most effectual means for securing to all peoples the benefits of a real and durable peace, and above all, for putting an end to the progressive development of the present armaments." The conference met at The Hague on May 18, 1899. Twenty-six powers were represented. Thus, for the first time in history, a great international assembly met for the express purpose of acting as a sort of rudimentary legislature by considering not one question alone, but many, and making laws thereon for the whole family of nations. One of the subjects suggested for consideration was a revision of the Brussels draft of 1874. The result of the conference was the giving of international obligation to a body of rules which were, for the most part, exactly similar to those which had been adopted at Brussels, saving modifications derived from various sources, particularly from the *Manual of Oxford* of 1880.

b. In addition to the rules adopted as above stated, a final Act of the Conference set out three distinct declarations. The first prohibited the throwing of projectiles or explosives from balloons for a period of five years; the second prohibited the employment of projectiles the sole object of which was the diffusion of asphyxiating or deleterious gases; and the third prohibited the employment of bullets which expand or flatten easily in the human body.

25. THE GENEVA CONVENTION OF 1906.—The next step in the development of a codification of the laws of war was taken by the Swiss government which invited the powers signatory to the Geneva Convention of 1864 to a conference for the purpose of discussing the advisability of a revision of the rules adopted at that time. The conference met in June, 1906, thirty-seven powers being represented. A new convention was signed on July 6, 1906. It remedied various serious faults which had been found to exist in the earlier conventions, and cleared up numerous misunderstandings growing out of uncertainty as to the meaning of certain words and phrases which rendered some of the earlier provisions unworkable.

26. THE SECOND HAGUE PEACE CONFERENCE, 1907.—*a.* The second peace conference, which met at The Hague in

1907, was proposed by the President of the United States "for the purpose of giving fresh development to the humanitarian principles which served as a basis for the work of the first conference of 1899." The initiative in actually calling the conference together was courteously surrendered by President Roosevelt to Nicholas II of Russia. Forty-seven nations were invited to send representatives, and all but three complied.

b. The results of the work of this conference were voluminous, touching a great many of the subjects that required regulation, and form the last great effort to reduce the laws of war to a code and secure for the same the general recognition of the civilized world. We need not refer to them in detail at present as much of their substance constitutes the subject matter of discussions elsewhere in this text. It is enough to say of them here that they included much of the work that had already been done by former conferences, particularly that of the Hague Conference in 1899, and that many new provisions of importance were added.

27. Conference on the Limitation of Armament, 1921.—At the invitation of President Harding, representatives of the Principal Allied and Associated Powers of the world assembled at Washington in 1921 to consider the subject of the limitation of the armaments of nations. Seven treaties were drafted and agreed upon by the representatives there assembled. One of these treaties had to do with the use of submarines and noxious gases in warfare. (See Sec. V of this chapter, par. 41.) The representatives also approved twelve resolutions (not in the nature of treaties, so requiring no ratification by the governments concerned) the first one of which was for the assembling of a commission of jurists to amend the laws of war. This commission assembled in 1922 and held its last session at The Hague on February 19, 1923. Its work was limited to recently developed implements of war. (See Appendix A, No. 34.)*

*It should be observed at this point that the rules adopted and the declarations announced by the several conferences discussed in this and the preceding paragraphs were not to be binding upon the several nations until assented to by them.

28. Present Situation Respecting the Laws of War.—In spite of all the efforts related above, it must be admitted that there is as yet no complete code of the laws of war in existence. Other efforts than those mentioned, but which have not received official sanction, have been made to cure defects and fill up gaps, particularly the Declaration of London of 1909 and those made by the Institute of International Law of more recent years. All that can be said is that a few of the customs of war have been incorporated into something of a code, leaving much to the realm of the common or unwritten branch of the custom and laws of war.

29. Trend and Possible Future Development.—*a.* It is a fact that since medieval times the laws of war have undergone a great change in the direction of the amelioration of the conduct of war generally. This development has not been brought about entirely by moral considerations. An important factor has been the necessity of discipline in modern armies. The first well disciplined modern army was that of Gustavus Adolphus. During the course of the next 100 years, other European armies found it necessary to maintain discipline according to law in order that they might be successful. That moral considerations have been the dominant force in bringing about their upward trend, however, cannot be denied.

b. One of the most impressive features of the laws of war is that in their influence on the conduct of war they stand apart. Improvements in strategy, tactics, munitions, equipment, and other adjuncts to carrying on war are destructive in their nature. That fact is not altered by the contention that this or that species of weapon or bullet is more humane than some other form of the same thing. The laws of war, on the other hand, tend to preserve and ameliorate rather than to overthrow and destroy; and, while they have moved upward hand in hand with the growth and development of the conduct of war along other lines, their effect has been to continue, so far as possible, the normal and well balanced conditions of peace, not only with respect to neutral nations but also with respect to those nations actual-

ly in belligerency who are playing no direct part in the clash of arms. The laws of war have even gone farther than this. While recognizing the right of the nations at war to destroy human life in battle and to wound the members of the enemy's army in active conflict, yet the moment one of those members is placed *hors de combat*, either by reason of wounds or capture, the laws of war step in and shield him from further harm until his legal status is so changed that he again becomes an active element.

c. It is useless to speculate upon whether in this interplay of forces the laws of war with their ameliorations on the one hand and the implements of war with their intensive destructive powers on the other will eventually result in victory for the former with the accompaniment of a perpetual world peace. The only thing that can now be said is that the laws of war constitute an imperfect manifestation of what is best in modern civilization, and seem to strive for still higher levels with each stage of development of the human race.

Section II

General Survey of the Modern Laws of War

Paragraph

Position in the realm of law....30
Definition....31
Distinguishing characteristics....32
Where the Laws of War may be found....33
Topical subdivisions....34

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30. Position in the Realm of Law.—*a.* It is necessary to an understanding of the modern laws of war that we fix in our minds their position in the general scheme of the affairs of the civilized world. They are not a part of the municipal law. Since they have to do with the relations of states, they constitute a subdivision of international law.

b. We have already seen that international law embodies those rules of action which are acknowledged by civilized states as controlling in their dealings with each other

and that one of its objects is the avoidance or mitigation of the miseries of war. During peace its influence is exerted in the direction of preventing war altogether. During war it is exerted in the direction of causing hostilities to be conducted along humane lines, and also of securing the observance by nations not at war of certain lines of conduct which have been determined upon as benefitting neutrals. War situations, therefore, bring into play two subdivisions of the rules of international law, one of which has to do with the attitude of neutrals toward each other and toward each of the belligerents, and the other of which governs the conduct of the warring states in their operations against each other as well as the conduct of military government. The last of these two subdivisions is the province of the laws of war.

31. DEFINITION.—The laws of war, then, may be defined as that subdivision of international law which prescribes the rights and obligations of belligerents, or, more broadly, those principles and usages which, in time of war, define the status and relations not only of enemies, whether or not in arms, but also of persons present upon the theater of active military operations and persons under military government, and which authorizes their trial and punishment when they become offenders.

32. DISTINGUISHING CHARACTERISTICS.—*a*. The laws of war are unlike military law proper in that they are not comprised in a formal written code, but consist mainly of general rules derived from international law, supplemented by acts and orders of the military power. They are also quite unlike and independent of the ordinary law. In the actual theater of active military operations, for example, the ordinary laws of the land are superseded by the laws of war. The jurisdiction of the civil magistrate which normally upholds the ordinary law is there suspended and military authority and force are substituted in its place. Even the highest law of our land, the Constitution itself, during a crisis or grave national emergency, may, for a time, in the theater of active military operations, be apparently supplanted by the laws of war. Thus in Varner

vs. Arnold (83 N.C. 210) the court said, referring to the Constitution, that during the Civil War "Its voice was hushed and its power suspended amid the din of arms."

b. The term "Laws of War" is, in a way, a misnomer. The word *law* gives us two quite definite mental impressions. One is that a rule has been laid down by superior authority, and the other is that it must be obeyed at the peril of punishment, for disobedience, by the power which laid it down for guidance. It is perfectly clear that the rules of international law are not laid down by superior authority, and that they are not enforceable on sovereign states by any legally constituted superior power. Why, then, does a sovereign state live up to rules which may have become inconvenient or irksome to it? There are a number of forces which operate to secure obedience, even though they do not penalize in the ordinary sense. In peace, these forces consist of the pressure which the better and more moral element of the citizens of a state will bring to bear on its central government to compel right action, the ever-present likelihood that the injured or offended people will take action through their central government by way of a declaration of war or something of that nature to secure proper treatment and respect for their rights, and the view that international public opinion will take of the situation. In war, these forces consist principally of public opinion in neutral nations, and the possibility that the enemy will resort to reprisals or some other form of retaliation. These are subtle but very effective forces. They are easily recognizable in the affairs of our daily lives, where they are not less potent than in the affairs of the great modern states.

33. WHERE THE LAWS OF WAR MAY BE FOUND.—The laws of war have been formulated in special treaties and discussed in a series of authoritative publications which have already been considered in Section I of this chapter. Of these, and official manuals on the subject in which extracts may be found, the following may be listed here for the purpose of convenience:

a. Instructions for the Government of the Armies of the United States in the Field.—Lieber. (Published in G.O. No. 100, A.G.O., 1863.)

b. Geneva Convention of 1864.
c. Declaration of St. Petersburg of 1868.
d. Project of the Brussels Conference of 1874.
e. Manual of the Laws of War on Land, prepared by the Institute of International Law, 1880.
f. Declaration of The Hague Conference of 1899.
g. International Red Cross Convention, Geneva, 1906.
h. Second International Peace Conference, The Hague, 1907.
i. Rules of Land Warfare, 1914.

(NOTE:—Important extracts will be found in No. 34, Appendix A, of this text.)

34. TOPICAL SUBDIVISIONS.—For the purposes of this text, the laws of war may be considered as topically subdivided as follows:

a. The laws of war as affecting the rights of our own people.
b. The laws of war as affecting intercourse between enemies.
c. General principles governing the conduct of war.
d. Military government.
e. Martial law.

The first three of these are considered briefly in the next three sections of this chapter. The last two are covered in Chapters III and IV, respectively.

SECTION III

Laws of War as Affecting the Rights of Our Own People

Paragraph
The taking or destruction of private property 35
Arrest and restraint 36

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35. THE TAKING OR DESTRUCTION OF PRIVATE PROPERTY.—*a.* In time of war, when there is urgent necessity or immediate public danger, the military commander may appropriate such private property of our own citizens, even in our own territory, as may be needed for the use or subsistence of our army or for defense against the enemy, and he may seize or destroy *any* private property to keep it from falling into the hands of the enemy or from being availed of by him for attack or defense.

b. It is the emergency which gives this right, but the right is not given by all emergencies. The exigency must be imminent, not contingent or remote, and the danger immediate or impending, or the necessity for the public service must be so urgent as not to admit of delay, otherwise the taking or destruction will not be justified and the individual commander (not the government) will be held to be a trespasser and liable in damages to the owner.

c. Ordinarily, property taken by the government must be paid for by the government, for our Constitution provides that private property shall not be taken for public use without due compensation. This, however, should be distinguished from the destruction or damage to private property incidentally occasioned by legitimate operations against an enemy in an emergency, in which case the owner is not in a position successfully to prosecute any claim whatever against the government except as sanctioned by the government in special statutory provisions. (See the Acts of Aug. 24, 1912, [37 Stat. 586], April 18, 1918 [40 Stat. 532], June 4, 1920 [41 Stat. 779], and June 30, 1922 [42 Stat. 725].)

36. ARREST AND RESTRAINT.—Such of our own people as may become chargeable with relieving or communicating with the enemy, carrying on illicit trade or intercourse, or other violations of the laws of war, may be arrested, tried, and punished.

SECTION IV

Laws of War as Affecting Intercourse Between Enemies

Paragraph

Rule of non-intercourse 37
Exceptions to the above rule 38

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37. RULE OF NON-INTERCOURSE.—Upon the declaration or initiation of a foreign war, or of a civil war such as our own War of the Rebellion, not merely the opposing military forces but all citizens or subjects of each belligerent be-

come the legal enemies of both the adverse government and its citizens or subjects, and all intercourse between them, direct or indirect, is terminated and interdicted, even innocent correspondence having no relation to the war being prohibited. (See Chap. I, Sec. III, par. 20.) Violations of this rule by selling to, buying from, or contracting with enemies, furnishing them with supplies, corresponding with or carrying mail to them, passing the lines without authority, etc., are among the offenses most frequently tried and punished by military commissions.

38. EXCEPTIONS TO THE ABOVE RULE.—Among the more familiar exceptions to the foregoing rule of non-intercourse may be mentioned the use of flags of truce, entering into armistices, cartels, or other conventions, and special communications respecting the exchange of prisoners of war. A more distinctive exception is the licensing of trade between belligerents. During the Civil War, Congress authorized such licenses to be granted in special cases by the President (not by military commanders), and Congress later authorized the Treasury Department to make purchases of products from insurrectionary States.

SECTION V

General Principles Governing the Conduct of War

(*As specially applicable to enemies in arms*)

Paragraph

War waged against the state as a belligerent only, and not against individuals 39
Operations of war carried on only by legitimate forces of the state 40
Authorized weapons and means of warfare 41
Truces and conventions 42
Treatment of prisoners of war 43
Punishment of persons guilty of violations of the laws of war 44

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39. WAR WAGED AGAINST THE STATE AS A BELLIGERENT ONLY, AND NOT AGAINST INDIVIDUALS.—*a.* Except where

unavodiable in the course of legitimate operations, private individuals and non-combatants are not to be involved in injury to life, person, or property.

b. Life and person.—(1) The laws of war justify the killing or disabling of the members of one army by those of a hostile army, in battle or hostile operations, but, except as may be incidentally unavoidable in the armed contests of war, it is a crime to kill or commit violence against non-combatants and private individuals not in arms, including women and children, the sick, persons taken prisoner or surrendering in good faith, surgeons, assistants and employees charged with the care and transport of the wounded on the field and attendance upon them in field ambulances or hospitals, and inhabitants of the country who, in good faith, bring aid to the wounded in the field or assist in their care. (See par. 12, *Rules of Land Warfare.*)

(2) Camp-followers, though they may be taken prisoner, are to be treated as non-combatants so long as they abstain entirely from offensive acts.

(3) Sick or wounded officers or soldiers of the enemy taken in the field or in hospital are prisoners of war and are entitled to receive the same treatment as members of the capturing army similarly disabled.

c. Property.—(1) Formerly all property of the enemy, public or private, whether taken in battle or seized otherwise during the war, became the absolute property of the capturing or appropriating belligerent. This no longer applies to private property, or to lands or other real property belonging to the state unless the state be destroyed and cease to exist. It is still true, however, as to other public property, such as funds, money-securities, munitions, supplies, and means of transportation. The same rule extends to, and permits the destruction at will of, factories, mills, foundaries, warehouses, depots, offices, or other buildings in which munitions of the enemy may be manufactured or stored; but all public institutions of a civil character, such as capitols, statehouses, buildings of the departments of the government, courthouses, churches, colleges, schools, libraries, hospitals, asylums, museums, col-

lections of art and science, and historical monuments, are exempted from such disposition. The burning of our Capitol and the President's House at Washington by the British forces in 1814 was wanton, without justification, and contrary to the modern laws of war. It was scathingly denounced at the time in the British House of Commons.

(2) The rule as to taking or destroying private property of the enemy is much the same as that applied to the private property of our own people. The humane maxims of the modern law of nations exempt the private property of non-combatant enemies from capture as booty of war. In fact all private property, whether of individuals or of private corporations, is now in general regarded as properly exempt from seizure, except where it is suitable for military use or is of a hostile character.

(3) Towns and villages in the enemy's country may not be attacked at all, unless defended, and, if they are to be bombarded, fair warning must first be given by the attacking commander. If some buildings must be burned, blown up, or torn down, special care must be taken not to disturb those occupied as hospitals or in which wounded are cared for.

40. Operations of War Carried on Only by Legitimate Forces of the State.—*a*. The legitimate forces of the United States are designated in the Constitution as the Army, Navy, and Militia. The following conditions must be satisfied:

(1) That of being under the direction of a responsible leader.
(2) That of wearing a uniform or distinctive mark, which latter must be fixed, capable of being recognized at a distance.
(3) That of bearing arms openly.

b. Recognition as forming a part of the armed forces of a state is also accorded the population of a territory not yet occupied by the enemy, who, upon his approach, spontaneously take up arms to resist the invading army, even though, owing to lack of time, they have not yet organized themselves militarily.

c. Guerillas or other irregular armed bodies or persons, not forming part of the organized forces of a belliger-

ent or operating under the orders of its established commanders, are not in general recognized as legitimate troops or entitled, when captured, to be treated as prisoners of war, but may be summarily punished, even with death.

d. Should one belligerent organize and include within its forces contingents of uncivilized combatants who would not be likely to respect the laws of war, the other belligerent would be justified in refusing to recognize them as legitimate forces.

41. AUTHORIZED WEAPONS AND MEANS OF WARFARE.—*a.* Illegitimate weapons of war include those which, in disabling or causing death, inflict a needless, unusual, or unreasonable amount of torture or injury. Poison or poisoned weapons, explosive bullets or projectiles weighing less than 400 grammes, projectiles filled with powdered glass, dum-dum bullets, etc., come under this head.

b. The poisoning of wells or springs of drinking water, or of provisions likely to fall into the enemy's hands and be partaken of by his troops, would constitute a marked violation of this principle.

c. In 1899, several of the more prominent nations of Europe and Asia pledged themselves at the Hague Conference of that year not to use projectiles the only object of which was to give out suffocating or poisonous gases. Germany signed this pledge in 1900, yet she initiated the use of poisonous gases during the World War when she launched her deadly chlorine attack on April 22, 1915, against the French and British lines in the northeastern part of the upper Ypres salient. Thus forced by Germany, the Allies turned their attention to the use of this new weapon and to devising means for protecting their troops against it.

d. Though the United States did not sign the pledge not to use poisonous gases in warfare, its attitude has always been against such employment. The soundness of this attitude is questioned by Admiral Mahan in language as follows:

> "It is illogical and not demonstrably humane to be tender about asphyxiating men with gas, when all are prepared to admit that it is allowable to blow the bottom out of an ironclad at mid-

night, throwing four or five hundred men into the sea to be choked by the water, with scarcely the remotest chance to escape."

e. Regardless of the logic of this, and regardless of the extent to which we may be inclined to agree with it, the fact remains that it does not represent the views of the Conference of the Principal Allied and Associated Powers that met at Washington, D.C., in 1921, for consideration of the limitation of armament. As already stated above, one of the seven treaties agreed upon by the conferees upon that occasion related to the use of submarines and noxious gases in warfare. While the Conference was unable either to abolish or to limit submarines, it stated with clarity and force the existing rules of international law which condemned the abhorrent practices followed in the recent war in the use of submarines against merchant vessels. The treaty respecting the use of poisonous gases contained the following provision:

"The use in war of asphyxiating, poisonous or other gases, and all analogous liquids, materials or devices, having been justly condemned by the general opinion of the civilized world and a prohibibition of such use having been declared in treaties, to which a majority of the civilized Powers are parties,

"The Signatory Powers, to the end that this prohibition shall be universally accepted as a part of international law binding alike the conscience and practice of nations, declare their assent to such prohibition, agree to be bound thereby as between themselves and invite all other civilized nations to adhere thereto."*

f. It may be urged that nations at war will not adhere to this rule, or that some of them in the future may break it as did Germany in the past, and thereby compel others to do likewise in self-defense. In this connection the remarks made by Mr. Root, one of the representatives of the United States, in presenting the treaty for the approval of the Conference are of interest. He said:

"You will observe that this treaty does not undertake to modify international law in respect of visit, search, or seizure of merchant

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*The agreements made at the Washington Conference of 1921 are not binding upon any of the governments until ratified by all of the governments represented at that conference. The prohibition against the use of asphyxiating and poisonous gases has not, up to the present time (October 1, 1925), become binding upon the powers there represented.

vessels. What it does undertake to do is to state the most important and effective provisions of the law of nations in regard to the treatment of merchant vessels by belligerent warships, and to declare that submarines are, under no circumstances, exempt from these humane rules for the protection of the life of innocent non-combatants.

"It undertakes further to stigmatize violations of these rules, and the doing to death of women and children and non-combatants by the wanton destruction of merchant vessels upon which they are passengers and by a violation of the laws of war, which as between these five great powers and all other civilized nations who shall give their adherence shall be henceforth punished as an act of piracy.

"It undertakes further to prevent temptation to the violation of these rules by the use of submarines for the capture of merchant vessels, and to prohibit that use altogether. It undertakes further to denounce the use of poisonous gases and chemicals in war, as they were used to the horror of all civilization in the war of 1914-1918.

"Cynics have said that in the stress of war, these rules will be violated. Cynics are always near-sighted, and often and usually the decisive facts lie beyond the range of their vision.

"We may grant that rules limiting the use of implements of warfare made between diplomatists will be violated in the stress of conflict. We may grant that the most solemn obligation assumed by governments in respect to the use of implements of war will be violated in the stress of conflict; but beyond diplomatists and beyond governments there rests the public opinion of the civilized world, and the public opinion of the world can punish. It can bring its sanction to the support of a prohibition with as terrible consequences as any criminal statute of Congress or of Parliament.

"We may grant that in matters which are complicated and difficult, where the facts are disputed and the argument is sophistic, public opinion may be confused and ineffective, yet when a rule of action, clear and simple, is based upon the fundamental ideas of humanity and right conduct, and the public opinion of the world has reached a decisive judgment upon it, that rule will be enforced by the greatest power known to human history."

g. Resort to the employment of assassins, or other violent or harmful and secret methods which cannot be guarded against by ordinary vigilance, such as the use of savage allies, introduction of infectious or contagious diseases, etc., is interdicted by civilized usage.* Thus the use, for the purpose of deceiving the enemy, of the national colors of the enemy, or a flag of truce, or the brassard of the Geneva Convention, or the uniform of the enemy, deprives those captured while designedly indulging in or attempting such

*See *Winthrop*, 1223 and 1224, and the numerous authorities there cited.

deception of the right to be treated as prisoners of war. They may be shot without trial, or tried and sentenced to death in the same manner as spies.

42. TRUCES AND CONVENTIONS.—*a.* Truces and conventions include cartels, capitulations, and armistices. Communications between enemies respecting them are usually initiated by flags of truce. The commander to whom a flag of truce is sent is not obliged to receive it under all circumstances, but he may not fire upon it or offer violence to its bearers without sufficient warning. An armistice may be either general or local, depending upon the purposes, duration, and terms fixed by the agreement. It does not affect the state of war; that is, it is not a partial or temporary peace; it is only the suspension of military operations to the extent agreed upon by the parties.

b. The rule to remember about capitulations is that they should never involve unnecessary ignominy, or conditions otherwise repugnant to military honor. Private effects should not be required to be surrendered, and officers are generally allowed to retain their swords or other sidearms.

43. TREATMENT OF PRISONERS OF WAR.—*a.* Prisoners of war are not convicts. The purpose of their captivity is not to punish or wreak vengeance upon them, but merely to restrain them as a war measure. They are the prisoners of the captor's government, not the captor. No violence against them is justified by the mere fact that they are enemies. Each is treated with due regard to his rank, and, in the absence of special agreement between the belligerents, is placed on the same footing with regard to food and clothing as the troops of the government that made them prisoners. If they cannot be subsisted, they should be released on parole. The wounded are to be treated with the same care as the wounded of the captor.

b. The days of "no quarter" on the battlefield have long since passed, and it is now a grave violation of the laws of war to kill prisoners of war or subject them to unreasonably harsh or cruel treatment, except, to a certain degree only, by way of retaliation for similar acts by the enemy. (See next succeeding paragraph.)

c. Camp-followers, including members of soldiers' families, sutlers, contractors, newspaper correspondents, and others allowed with the army but not in the public employ, should, when taken, be treated much in the same manner as prisoners of war, but should be detained only so long as military necessity may require.

d. Of the non-combatants of an army, those comprising the staff of the hospitals and ambulance units, such as medical officers, enlisted men and other attendants employed in the care and transport of the sick and wounded, also chaplains and priests, are considered under the Geneva Convention as entitled to the benefit of neutrality while in the exercise of their functions. They are left for the time to the performance of these duties. During our Civil War, neither medical officers nor chaplains were held as prisoners of war, but were forthwith "unconditionally discharged."

e. The personal effects of prisoners of war remain their own property, except such as may be intended for or adapted to military use. To deprive them of their proper clothing, or of such necessary articles as their watches, is illicit and punishable. Large sums of money captured in their train, however, cannot be claimed by them as their private property. But for this rule, public funds about to be captured, and therefore about to become the property of the captor, could simply be turned over to an individual to be claimed as his private property.

f. Prisoners of war must not conceal their true names or rank, but they cannot be required to divulge information respecting their own government, country, or army. They may be employed upon public works, which have no direct relation to military operations, provided the employment given them is not degrading with reference to their military rank, if they belong to the army, or to their official or social position if they do not so belong. They may be permitted to work for private employers, the accruing wages to be held or expended for their benefit.

g. A prisoner of war may be shot and killed while attempting to escape, or, if he escape and is retaken before being able to rejoin his own army or before leaving the terri-

tory occupied by the army which captured him, he is liable to disciplinary punishment; but if he succeed in escaping and is subsequently retaken prisoner he is not liable to punishment for the prior escape unless he was at the time under a parole *not* to escape, in which case he forfeits his right to be treated as a prisoner of war.

h. The exchange of prisoners of war may not be demanded as a matter of right, this being entirely subject to the discretion of the belligerent which holds them captive. In this connection, however, it should be borne in mind that prisoners of war are bound by the laws of their own country with reference to parole; that is, if the laws of their own country prohibit their giving a parole they cannot give one. It should also be remembered that a commissioned officer can give his parole only with the permission of a military superior, provided such superior in rank is within reach. Cartels set forth the general conditions upon which exchanges will be made and the times and places of delivery. They usually provide that prisoners of the same grade shall be exchanged, officer for officer and enlisted man for enlisted man, and that officers of the higher grades may be exchanged for a certain number of individuals of a lower rank, according to a stated scale of equivalents. Thus in the cartel of exchange entered into between the United States and the Confederate States in July, 1862, it was stipulated that a general or an admiral should be exchanged for an officer of equal rank, "or for sixty privates or common seamen," and so on down through the lower grades. A captain was declared exchangeable for an equivalent of six privates, a lieutenant for four, and a noncommissioned officer for two. Citizens were to be exchanged only for citizens. Sutlers, teamsters, and all other civilians in the actual service of either belligerent were to be exchanged for persons of similar positions. (See Appendix A, No. 7.) An interesting feature of this scale of equivalents is the low valuation placed upon officers in terms of enlisted men. Just what valuation would be appropriate will depend largely upon the circumstances existing at the time of the agreement, such as the necessity for enlisted men as compared with the

necessity for officers, the amount of technical education and training the latter have received, etc.

i. Paroled prisoners may not, until regularly exchanged or released from parole, take up arms again or engage in any work or the discharge of any duty usually performed by soldiers. No military person other than a commissioned officer can regularly give a parole. Paroles by enlisted men are rendered for them by their commanding officers. Paroles must be voluntary; that is, they cannot be compelled. Wholesale paroling, as of troops on the battlefield or of detachments in mass, is unauthorized. Violation of a parole takes away the right to be treated as a prisoner of war if recaptured. There were very few violations of paroles during our Civil War, but the Mexicans violated them so indiscriminately during the Mexican War that General Scott publicly threatened offenders with hanging and required the signing of the parole to be accompanied by the taking of a religious oath.

j. When bodies of troops or individuals of the armies of a belligerent avoid being made prisoners of war by taking refuge within the territory of a neutral power, such neutral does not, and cannot, make them prisoners. She *interns* them, that is, takes charge of and holds them with their arms and other material of war at some appointed station within her limits, usually as far removed as practicable from the theater of operations, and, in the absence of special convention otherwise regulating the matter, maintains them, clothes them, and renders them such medical or other aid as humanity may require, for all of which she is paid by their government at the conclusion of hostilities. Officers of an interned force may, in the discretion of the interning state, be paroled on condition that they are not to leave the neutral domain without special authorization.

k. The sick and wounded of a belligerent army may be moved across neutral territory without becoming subject to internment, but only hospital personnel may accompany them, and no *matériel* of war may be included except such as is required for their actual use.

44. PUNISHMENT OF PERSONS GUILTY OF VIOLATION OF THE LAWS OF WAR.—*a.* Offenders against the laws of war usually have been brought by us to trial before military commissions. Should a belligerent refuse or neglect to bring an offender to trial, the other belligerent may resort to the taking of hostages, to reprisal, or to some other form of retaliation. For example, the unwarranted treatment of prisoners of war by an enemy may be met by treating in a similar manner prisoners taken from him, or by specially holding them for such treatment. In 1776, when the British proposed to treat Major General Charles Lee, whom they had taken prisoner, as a deserter from the British Army, Congress caused a lieutenant colonel of the British army and five Hessian field officers, who were prisoners of war in our hands, to be placed in close confinement awaiting the action taken in General Lee's case. In 1782, Captain Asgill of the British army was selected by lot as a subject for retaliation for the unlawful killing of Captain Huddy of our army, a prisoner of war in the hands of the enemy. In 1863, President Lincoln ordered that a Confederate soldier be executed for every soldier of the United States killed in violation of the laws of war, and that for every one enslaved or sold into slavery (referring to the colored troops) a Confederate soldier be placed at hard labor on public works and so continued until the other should be released and accorded the treatment due a prisoner of war.

b. The right of retaliation will not justify a resort to measures repudiated by civilized warfare. Cruelty, inhumanity, or gross and unjustifiable injury practiced by one belligerent will not justify or warrant a similar proceeding by way of retaliation on the part of the other. It has been said that the soundest of the grounds for the trial and sentence of Maximilian of Mexico was that it was justified by way of retaliation for his decree of 1865 that all Juarists (supporters of the existing republican government) taken with arms in their hands should be treated as bandits.

c. A form of indirect retaliation which has sometimes been practiced consists of seizing subjects of the enemy and holding them in confinement as *hostages* until a wrong has

been righted, or as a guarantee that no wrong will be committed. In 1864, General Sullivan commanding at Harper's Ferry, directed that for every inhabitant of certain counties in Virginia conscripted into the Confederate army, the nearest and most prominent secessionist should be arrested, imprisoned, and held until the return of such conscript.

d. Taking possession of property of the enemy or of his subjects and holding it as indemnity for injury inflicted in violation of the laws of war, or as security until indemnity is duly rendered, would be *reprisal.* The case, to justify it, would have to be grave and the necessity imperative, especially if it should involve the seizure of private property, and must in all cases be consistent with the rules of humanity and morality.

CHAPTER III

Military Government

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SECTION I

General Survey

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1. WHAT MILITARY GOVERNMENT IS.—*a. Definition.*—Military government is that dominion or form of military jurisdiction exercised in war, or pursuant to war, by a belligerent over enemy territory occupied by his military forces, and over the inhabitants and property thereof.

b. Distinguished from martial law.—The British really make no distinction today between *military government* and *martial law.* Their exercise of military government in

occupied Germany after the World War they denominated martial law. In the United States, the terms have taken on different meanings since Chief Justice Chase pronounced his dissenting opinion in the Milligan case (4 Wallace, 141) in 1867, so it is necessary that we understand the distinction.

c. Military government is a real government exercised for a more or less extended period by a military commander, in time of or pursuant to a foreign war, over occupied foreign enemy territory, or, in time of or pursuant to rebellion and civil war, within occupied districts of the home country taken from rebels treated as belligerents.

d. Martial law, on the other hand, is merely military authority called into action otherwise than as prescribed by the law of the land, when and to the extent that the public danger requires it, in localities or districts of the home country which still maintain adhesion to the general government.

e. The *subjects* of military government are the belligerent or other inhabitants of enemy territory invaded and occupied in war, foreign or civil; those of martial law are our own immediate fellow citizens or inhabitants who, though perhaps disaffected or in sympathy with the public enemy, are not themselves belligerents or legally enemies.

f. The *occasion* for military government is war; that for martial law is simply public exigency which, though more commonly growing out of pending war, may nevertheless present itself in time of peace.

g. The *field* of military government is enemy territory, whether our own or foreign soil; that of matrial law is such portion of our own country as may be involved in the exigency.

h. Use of the term.—The term *military government* is practically unknown and unused abroad. The British sometimes speak of the *government of occupied territory* and of *military occupation* but, as stated above, the technical term used by them in that sense is *martial law.* The French employ the term *military authority over the enemy state.* Our own civil writers generally speak of military government

as the *government of occupied territory,* or as the *law of hostile occupation.* The term military government is used in our Army almost to the exclusion of all other terms of the same meaning, and the reason for it is that the military man understands, perhaps better than anyone else, what military government actually is. He understands that it is a real government and that it is just as complete in every sense as a civil government, the only fundamental difference being that it is exercised by military authority.

i. Sources of information.—On the subject of military government, textbooks have proved to be of little practical value. They state the general law correctly, which is simple and composed of but few principles, but they do not indicate the scope of the subject nor the details of its practical exercise. Strange to say, Halleck, the eminent American writer on international law whose work has gone through several European editions, hardly devotes a single page to assist us in this respect, although he had as much to do as any other American in connection with the establishment and administration of military government in a practical way.

j. The decisions of courts, especially of our own Supreme Court, are of incalculable value as settling the law relating to military government. The compilation of cases which was made by the Army Staff College class of 1910-1911 is excellent in every respect and saves the reader from going over a great amount of unnecessary matter in the court reports.

k. The War Department publication, *Rules of Land Warfare,* contains all the law on the subject that, up to the date of its issue, 1914, had been agreed to by the nations.

l. On the practical side, however, the reports of our military governors are the very best source of information as to the practical operation of military government that can be obtained. General Davis' report on the military government exercised in Porto Rico, General Wood's report on Cuba, and General McArthur's report of government in the Philippines are especially valuable, and to these may now

be added the official report on the military government of occupied Germany.

m. Development.—Military government has been developed almost entirely within the past two centuries. Its development has been along with, or as a part of, the amelioration of the conduct of war generally. As it is now understood, military government was unknown to ancient and medieval peoples. The Romans, wherever they went, governed the territory that they occupied under the theory that by occupying it they had permanently incorporated it into the Roman state. In medieval times territory was frequently ceded back at the end of the war, but so long as it was held by military forces it was regarded as in every way a part of the territory of the conquering state. This, as has already been pointed out, is no longer the correct view.

2. Exercise of Military Government.—*a. As an exercise of sovereignty.*—As stated by Manning in his *Commentaries on the Law of Nations* (p. 135), "A victorious State takes the place of the sovereign of the vanquished." Whether the place of the prior sovereign is taken permanently or temporarily will depend upon the disposition of the occupied territory at the peace table. International law recognizes that, having overthrown the pre-existing government and deprived the people of the protection which that government afforded, it becomes not only the right but the duty of the invader to give the vanquished people a new government adequate to the protection of their personal and property rights.

b. It is decidedly to the military advantage of the invader to establish a strong and just government, such as will preserve order and, as far as possible, pacify the inhabitants.

c. The former government having been dispelled, the supremacy of the government substituted by the conqueror is absolute and is legal in the highest sense. Its acts are just as lawful as if they were the acts of a sovereign in time of peace. The Hague rules, original in French, also both the American and British translations, speak of the former government as the *legal* or *legitimate* government, but this

does not signify that there is any lack of legitimacy or legality in the military government of the conqueror.

d. The military government, being supreme, can lawfully demand the absolute obedience of the inhabitants of the area over which it is exercised. The relation of these inhabitants to the military government was formerly, and apparently still is, spoken of as *allegiance*, but this is not a proper term. They do not owe allegiance, they owe *obedience.*

e. By whom exercised.—Military government may be said to be exercised by the military commander, under the direction of the President, with the express or implied sanction of Congress. Congress having, under its Constitutional powers, declared or otherwise initiated the state of war and made proper provision for carrying it on, the prosecution of hostilities devolves upon the President as the constitutional commander-in-chief of our military and naval forces. In this capacity, unless and until Congress shall specifically provide otherwise, it becomes his right and duty to exercise military government over such enemy territory as may pass into the possession of our forces.

f. In exercising such a government, the President represents the sovereignty of the nation. He cannot, of course, personally administer all the details, so he is regarded as having delegated to the commander of the occupying forces the requisite authority for the purpose. Such commander may legally do whatever the President might himself do if personally present, and in his proceedings and orders is presumed to act by the President's direction or sanction.

g. Extent and limitations of the power.—The power thus vested in the President and his military subordinates is a large and extraordinary one. As expressed by the Supreme Court of the United States in 20 Wallace, 394, the governing authority

> "may do anything necessary to strengthen itself and weaken the enemy. There is no limit to the powers that may be exerted in such cases save those which are found in the laws and usages of war."

This is true in all cases where military government is being exercised over *foreign* territory. There the military com-

mander of the occupying forces is subject only to such conditions and restrictions as are imposed by the laws of war, which of course include the limiting instructions given by his home government.

h. In cases where military government is being exercised over *home* territory instead of foreign territory, however, not only the laws of war, but also the laws of the land, especially the provisions of the Constitution of the United States, may play an important part. Especially is this true in cases where conquered territory has been incorporated into the United States, or where, as in the case of the Civil War, it constituted a part of the United States before the war began. Thus, in Dooley *vs.* U. S. (182 U. S. 222), it is said that, while the power of the military commander is

> "necessarily despotic, this must be understood rather in an administrative than in a legislative sense. While in legislating for a conquered country he may disregard the laws of that country, he is not wholly above the laws of his own. *For instance, it is clear that while a military commander during the Civil War was in the occupation of a Southern port, he could impose duties upon merchandise arriving from abroad, it would hardly be contended that he could also impose duties upon merchandise arriving from ports of his own country.*" (Italics supplied.)

i. The Constitution of the United States can not, of its own force, project itself over hostile territory occupied by our military forces. Nevertheless, particularly in the exercise of military government over ceded territory over which Congress has not yet extended the provisions of the Constitution, that instrument constitutes a valuable guide to the military commander respecting certain *natural rights* which, if denied by the old government, should, *to the extent permitted by the military situation,* be immediately initiated in the occupied territory. These "natural rights," as suggested in Downes *vs.* Bidwell (182 U. S. 244, 282), are the rights

> "to one's own religious opinions and to a public expression of them, or, as sometimes said, to worship God according to the dictates of one's own conscience; the right to personal liberty and individual property; the freedom of speech and of the press; to free access to courts of justice; to due process of law and to an equal protection of the laws; to immunities from unreasonable searches and seizures, as well as cruel and unusual punishments; and to such other immunities as are indispensable to a free government."

j. The extent to which these rights or privileges can be initiated in cases of this kind, also the character of the military government to be established in *any* case, must necessarily always be subordinate to the requirements of military success. So far as our experience is concerned, this was best illustrated in the Philippines where the military government was regarded as of minor importance so long as major active hostilities were in progress.

k. It is an interesting question whether Congress can legislate with respect to military government. It is enough to say that Congress never has attempted to do so. The exercise of military government is a war power. Congress may declare the war but the President, as Commander-in-Chief, must carry it on. Manifestly, even if Congress had the power so to legislate, it would be most unwise for it to exercise that power, for the requirements of military government may change from day to day, as changes take place in the tactical situation, and must, therefore, be subject to military order rather than to the slow process of legislation. The legislative acts of Congress with respect to the Southern States within which military government was exercised under the Reconstruction Acts may at first appear to be an exception to the principle here stated, but it is believed that it will be found on examining the cases that the legislation was sustained under the constitutional right of Congress to "guarantee to every state in this Union a republican form of government." At the end of the war it became not only the right but the duty of Congress to dictate the terms upon which the conquered States should be restored to the exercise of State powers in the Union.

l. How proclaimed.—Military government proclaims itself. A formal proclamation is not legally necessary to establish it, nevertheless, such a proclamation is invariably issued and is essential in a practical way as announcing to the people the fact that military government has been established and advising them in general as to the conduct that is to be expected of them.

m. Duration.—The status of military government continues from the beginning of the actual occupation until the

invader is expelled by force of arms or himself abandons his conquest, or until the country is restored to its original allegiance, incorporated into the domain of the prevailing belligerent, or otherwise disposed of under the treaty of peace. The conclusion of the treaty of peace does not necessarily put an end to the military government, for the occupation usually is continued thereafter until the treaty stipulations have been fulfilled, or until Congress has made adequate provision for bringing the occupied territory under the civil governmental system of the new sovereign. Thus the military government of Porto Rico continued in effect, after ratification of the treaty of peace with Spain, until May 1, 1900, on which date the Act of Congress of April 12, 1900, establishing a civil government for that island, became effective. The military government of Cuba similarly continued in effect after the treaty of peace until Cuba was set free.

n. When territory may be said to be occupied.—Since the authority for exercising military government arises from the fact of hostile occupation, the military commander must be able to determine when enemy territory has been occupied in fact. Such territory is considered occupied when, as the result of its invasion by a hostile force, the prior government has ceased to exercise its ordinary authority therein and the invading state is alone in a position to maintain order. Mere invasion or presence of the hostile army in the country is not sufficient. There must be full possession. It is not necessary or essential, however, that the country be actually *conquered.* Within a week after their entrance into France, in August, 1870, the Germans had inauguarated a civil administration of Alsace and Lorraine, but the territory was not actually conquered until Strasburg was surrendered nearly a month later.

3. Relation to Municipal Laws.—*a. Changes in local laws.*—The local laws and ordinances which are in effect in the enemy's territory at the time that hostile occupation takes place may be adopted, amended, or abrogated at will, in whole or in part, at the discretion of the new governing

authority. In general, it is wise to adopt and continue the old laws and governmental system to the fullest extent possible. Laws relating to personal and property rights seldom require modification. Political laws, on the other hand, frequently require very extensive modification.

b. The exercise of the discretion of the governing authority in this respect will depend mainly upon the previous political relations of the belligerent powers, upon the temper of the inhabitants and their officials, and upon the ability of the latter to preserve order and maintain justice. Our occupation of Mexcio in 1847 is an example of a case where the incapacity of the local authorities to afford protection to the peaceable portion of the community, rendered the exercise of a strict government an absolute necessity.

c. It is the chief duty of the commander of the army of occupation to maintain order and the public safety, as far as practicable without oppression of the population, as if the district were a part of the domain of his own country. On the other hand, the people of the territory, having passed under the authority of the occupying belligerent, are bound to render obedience to any new laws or edicts which he may impose. In this compliance they will usually be protected by their own courts upon a subsequent resumption of authority by their own government.

d. Creation of courts.—For the enforcement of military government various courts are necessary. The invader frequently employs the courts he finds already established in the occupied territory for the trial of civil cases, and, indeed, when he may do so safely, for the trial of ordinary criminal offenses. It must be remembered, however, that these courts derive their power from the *invader*, even in cases where they apply the laws formerly in force, for those laws remain the law of the country only by reason of the sanction of the invader. The commander of the occupying forces will always find it necessary to employ some special courts of his own—military courts—for the trial and punishment of civilians who commit offenses against the conquering power, that is, acts injurious to the invader's cause and in violation of the laws of war. For this purpose the

United States employs military commissions and provost courts. Provost or one-man courts are, it is believed, unknown in European armies. Criminal offenses committed by members of the occupying forces are, of course, tried by courts-martial. Our general court-martial has the power to try any criminal case of which a military commission or provost court would have jurisdiction, but it is preferable not to use the general court-martial for the trial of civilians, especially since the new Articles of War (50½) require a certain procedure with respect to certain trials by general court-martial that might not be desirable in the matter of the trial of civilians for violations of the laws of war.

e. The commander of the occupied territory has the power to establish such new or additional courts as may become necessary, and those so established by him are as legally constituted as are any other courts of the land.

f. Military tribunals for the trial of civilians may be created with either criminal or civil jurisdiction, or both, such as ordinarily belongs to the civil courts. The jurisdiction of all courts in the occupied area, including existing civil courts which are left in operation as well as those which are newly established, may be restricted or enlarged whenever and to such extent as the commander may deem necessary.

g. Appointment of local officials.—The power of the conquering belligerent to change the old civil laws and government, if he finds it necessary or expedient in view of the conditions of the country, carries with it the power either to retain local civil officials or to remove any or all of them and appoint competent civilians or military persons in their places. Commissioners, governors, mayors, sheriffs, secretaries of state, collectors of customs, etc., so appointed by, or pursuant to, the orders of the military commander within the area occupied by the forces commanded by him, will legally and fully supersede the pre-existing officials in the administration of the government of that area.

h. As observed by the Supreme Court in the case of New Orleans *vs.* New York Mail Steamship Co. (20 Wallace 387, 393),

> "The conquering power has a right to displace the pre-existing authority, and to assume, to such extent as it may deem proper, the exercise by itself of all the powers and functions of government. It may appoint all the necessary officers and clothe them with the designated powers, larger or smaller, according to its pleasure. It may prescribe the revenues to be paid, and apply them to its own use or otherwise."

i. In 1847, in upper California, then in possession of our forces as a conquered Mexican province, General Kearney, pursuant to the orders of President Polk, established a military government which took on almost from the beginning a rather peculiar form. A government by the people was established; that is, the people elected their local officers and legislature. They even formulated and adopted a constitution by virtue of which California was admitted into the Union as a State without ever having gone through the territorial form of government. The Supreme Court of the United States (20 Wall. 394) subsequently affirmed the legality of this civil government "under the law of arms and the right of conquest." This government consisted mainly of military officers appointed to act as civil officials. Colonel R. B. Mason, 1st Dragoons, was appointed governor. Other appointees included 1st Lieutenant H. W. Halleck, Engineer Corps (afterwards General Halleck, the eminent author on international law), as Secretary of State, and Captain J. L. Folsom, A.Q.M., as Collector of Customs. Colonel Mason was succeeded by Brevet Brigadier General Bennet Riley, who continued as military governor until December 20, 1849, the date of the ratification and adoption of the first constitution of California above mentioned.

j. It will almost invariably be necessary to employ large numbers of the inhabitants in connection with the military government, in the subordinate governmental positions at least, and for this reason it is much easier for the conqueror and much better for the conquered that the general governmental system remain as before. Usually the higher officials are military officers, but some may be civilian citizens or subjects of the invading power. The military conqueror may employ military officers or civilians

of his own state, or fromer local officials or other inhabitants of the occupied area who are willing to accept appointment and take oath faithfully to perform their duties. *But all officers of a military government derive their power not from the former law but from the conquering state.*

k. Mexico has a law which forbids any of her officials from accepting office or executing authority under a military conqueror. This, of course, would be very embarrassing to the invading army, but such a rule would injure Mexico more than her enemy. In the Franco-Prussian war, various instructions were given by the French government to local officials in the East to flee, or not to accept any position of authority under the Germans. It is believed to be unlikely that any such instructions were given during the World War, for it is known that after the war France decorated some of the local officials who had remained at their posts during the German occupation and performed their duties in a manner most beneficial to the inhabitants.

l. Whether the military government be administered by officers of the army of the invader, or by civilians left in office or appointed by him for the purpose, it is the government for all inhabitants, native and foreign, and wholly supersedes the pre-existing civil authority.

4. REQUISITIONS.—If an occupying army finds it necessary to resort to the country for the means of its maintenance, it may seize the articles needed. This should be accomplished, if practicable, by formal requisitions upon the civil authorities rather than upon the individuals possessing the supplies. These requisitions should be made by the officer commanding, or under his direction and close supervision, should be only for necessaries, should not be excessive in amount, must be proportionate to the resources of the country so as to produce as little distress among the people as possible, and, unless payments in cash are made, receipts should invariably be given.

5. CONTRIBUTIONS.—*a.* The commander of an occupying army (but not an inferior) may, according to the weight of authority, exact pecuniary contributions from the conquered but only for purposes connected with the needs of

the army or the administration of the occupied territory, such as:

(1) Paying the costs of the military government during the occupation.
(2) Compensation for the protection of life and property and the preservation of order under circumstances of difficulty.
(3) As a fine for the commission, by troops or people of the invaded country, of acts specially injurious to the occupying army or to persons or property under its protection.

b. With respect to (3) above, it would be well to remember that one of the rules adopted at the Hague Convention of 1907 (Art. L) provides that no general penalty, pecuniary or otherwise, shall be inflicted upon the population on account of acts of individuals for which they can not be regarded as jointly and severally responsible. This is not to be construed, however, as prohibiting the infliction of collective punishments for such offenses as the community has committed, or permitted to be committed, which constitute violations of the laws of war or breaches of the occupant's proclamations or military government regulations. For instance, the inhabitants of a town or village may be held collectively responsible for the damage done to railways, telegraphs, roads, bridges, etc., in the vicinity. Fines are most frequently determined upon as the appropriate collective punishment to be inflicted in such cases.

c. Contributions may be required by commanders in temporary possession of the country, but are generally exacted only by virtue of an established occupation, or of a conquest for the time accomplished. They are usually exacted through the local authorities, not from individuals but from the hostile government or from communities in mass such as districts and towns. The collection must be effected as far as possible in accordance with the rules of assessment and incidence of the taxes in force, and for every contribution a receipt must be given to the contributor. (See Art. 51, *Rules of Land Warfare.*)

d. Contributions have been exacted in nearly all European wars. The English levied many in connection with their conquests in India. The Germans levied many in France, in 1870-71, by way of fines for acts described in par-

agraph *a* (3) above. In 1847 General Scott levied assessments, for the purposes described in paragraph *a* (1) above, upon nineteen Mexican States, in sums ranging from $5,000 to $668,332, the latter being the amount levied upon the City of Mexico. The same year, at Monterey, General Taylor made and enforced an assessment against the inhabitants of Tamaulipas, Nueva Leon, and Coahuila, by way of indemnification for the pillage and destruction of his wagon trains.

e. During our Civil War, numerous so-called contributions were exacted for purposes other than military, under circumstances which, in view of the rules adopted at the Second Hague Convention, make it extremely doubtful whether international law would now justify them. For example, General Butler as department commander, in 1862, required from certain individuals and corporations, alleged to have aided and abetted the enemy, a contribution of about $700,000 for the benefit of the "destitute poor" of New Orleans. The same year at St. Louis, General Halleck assessed persons in sympathy with the enemy "for the benefit of southwestern fugitives," and directed their property to be seized if necessary to enforce payment. General Grant at Chattanooga, in 1863, directed the indemnifying of Union families and refugees by means of assessments upon "secessionists in the neighborhood," and, in 1862, the Provisional Governor of Tennessee assessed Southern sympathizers in Nashville for the support of destitute families of persons who had been conscripted into the Confederate armies. Similarly, the Commander at Memphis, in 1863, required resident enemies having property to contribute to the support of refugees driven within our lines by "insurrectionary violence," and later required the same class to indemnify loyal individuals for damages suffered by reason of the seizure or destruction of their property by parties engaged in illegal warfare.

f. A favorite and convenient method of exacting contributions from the belligerent government is by way of taking over their customs houses and diverting the required sums from the revenues on imports.

g. The principal contributions required from governments by way of indemnity, however, are usually provided for in the treaty of peace or in the general armistice stipulations preceding the treaty of peace. At the close of the Franco-German war in 1871, the treaty of peace stipulated for a payment to Germany by France of an indemnity of five billions of francs to be paid within three years, and Germany occupied as security, until the final instalment was paid, six departments in the north and east of France and the fortress of Belfort. France met the payments promptly. Just now, the case is reversed, and Germany is staggering under enormous indemnity instalments, while France and others hold the security.

h. A matter of interest in connection with the subject of contributions is the fact that the Congress of the United States in 1849 enacted a statute (R.S. 3617) requiring monies received from whatever source for the use of the United States to be

> "paid by the officer or agent receiving the same into the Treasury, at as early a day as practicable, without any statement or deduction on account of the salary fees, costs, charges, expenses, or claims of any description whatever."

This was, on January 4, 1919, held by the Assistant Comptroller of the Treasury of the United States, then stationed in Paris, to apply to funds paid into the hands of the officials of the military government in occupied Germany on account of contributions, sale of supplies, etc. Compliance with this statute would, of course, bring into play the requirement of the Constitution of the United States (Art. I, Sec. 9), that

> "no money shall be drawn from the Treasury but in consequence of appropriations made by law."

The decision of the Assistant Comptroller was not in accord with the opinion of the Judge Adovcate of the American Expeditionary Forces, and whether or not it would be sustained by a judicial tribunal, if one could be found having jurisdiction in the matter, is at least questionable.

6. Use of Public Buildings.—*a*. Title to public real estate and other real property in the occupied territory does

not pass to the conquering state unless, as in the case of the Confederate States, the hostile state is destroyed and ceases to exist. The rule adopted by the second Hague Conference (Art. LV) is that

> "The occupying state shall be regarded as administrator and usufructuary of public buildings, real estate, forests, and agricultural estates belonging to the hostile state, and situated in the occupied territory. It must safeguard the capital of these properties, and administer them in accordance with the rules of usufruct."

b. Public buildings devoted to religious, charitable, educational, literary, or sanitary purposes, and the like, are not only exempt from seizure, but, unless necessity requires it, are also exempt from use in the exercise of the military government. If such buildings are required for the sick and wounded, such use should continue only during the emergency. Unnecessary injury to such institutions, or to historic monuments or collections, or to works of science or art, is forbidden and must be carefully guarded against.

7. RELATIONS WITH INHABITANTS.—*a. Compulsory employment.*—As a general rule, the inhabitants of territory occupied by an enemy cannot be compelled against their consent to take part in military operations or defense against their own government or army. In emergencies they may be required to perform labor of a *quasi*-military character, such as to drive carts or other vehicles or to work on roads or railroads, but they cannot be required to bear arms as soldiers, or impressed into labor on fortifications and the like. Thus, in the Franco-Prussian war, the French peasants were frequently required by the German military authorities to work on the roads and railways, and to serve as drivers of carts which were at the same time requisitioned.

b. The services that may properly be demanded of inhabitants of the occupied territory must relate to the needs of the occupying army. These are enumerated in *Rules of Land Warfare* (par. 318) as including:

> "the services of professional men and tradesmen, such as surgeons, carpenters, butchers, bakers, employees of gas, electric light, and water works, and of other public utilities and of sanitary boards in connection with their ordinary vocations. The officials and em-

ployees of railways, canals, river, or coastwise steamship companies, telegraph, telephone, postal, and similar services; and drivers of transport, whether employed by the State or private companies, may be requisitioned to perform their professional duties so long as the duties required do not directly concern the operations of war against their own country."

c. Another class of labor that may be requisitioned (*Idem.*; par. 319) relates to the restoration of general conditions, such as the

"repair of roads, bridges, railways, and as well to bury the dead and collect the wounded. In short, under the rules of obedience, they may be called upon to perform such work as may be necessary for the ordinary purposes of government, including police and sanitary work."

d. It should be remembered that there is no restriction against the employment of the inhabitants on forts and other fortifications, and in operations against the enemy, so long as such services are rendered voluntarily and are paid for. Of course, such employment may be inadvisable from the standpoint of the likelihood of information falling into the hands of the enemy.

e. Treatment in general.—The treatment of the inhabitants of the district under military government should be especially characterized by consideration shown for their domestic affairs, including their family relations and the exercise of their religion. Female honor, family ties, and religious beliefs and forms of worship must be sacredly respected. It was an alleged disregard of the religious scruples of the natives by the British in India that was the immediate cause of the disastrous Sepoy rebellion in 1857.

f. Police regulations.—A police force of civilians residing in the occupied territory may be organized to act in conjunction with the occupying army in maintaining order and securing obedience to laws and regulations. The following are examples of the things they may be required to regulate and enforce:

(1) Quarantine regulations, especially at seaports occupied by our forces.

(2) Restrictions upon local traders, especially those trading by boats on great rivers extending from the occupied territory into hostile or other territory.

(3) Restrictions upon the carrying on of business injurious to the military service, as dealing in liquors and in military clothing.

(4) Viséing of passes required of persons passing through the lines or traveling through disturbed parts of the country.

(5) Restrictions respecting passengers embarking upon and landing from vessels, such as examining their passports and baggage and depriving them of arms in their possession.

(6) Rules respecting railroad traffic and the use of telegraph, cable, and radio communication.

(7) Restrictions against carrying concealed weapons.

(8) Prohibition of unauthorized assemblages.

(9) Such curfew regulations as it may be necessary to establish.

8. Regulation of Elections.—The commander administering military government may, in proper cases, order or permit elections to be held, and where disorder, fraud, or intimidation is apprehended, may so regulate the conduct of the elections as to prevent breaches of the peace and secure a fair ballot.

9. Control of Publications.—The commander administering military government may suppress or suspend the publication, sale, or circulation of newspapers, magazines, books, pamphlets, or other publications or documents which display or tend to excite hostility against the occupying belligerent or against the measures used in prosecuting the war, or by which information or encouragement may be conveyed to the enemy.

10. Provisional Government.—*a.* The term "provisional government" is frequently applied to the military government which continues from the time the treaty of peace has been concluded up until Congress, under treaty stipulation or its Constitutional power to provide for the government of the territory of the United States, shall have provided a civil government for the area. For instance, General Kearney in 1846 established what was called a provisional civil government upon taking possession of New Mexico, and this continued for some years after the ratification of the treaty of peace terminating the Mexican War. The government thus established was, as heretofore stated, sustained and held by the Supreme Court of the United States to have deposed the pre-existing municipal government, and to have been legally administered during the

period of the possession of the country as a conquered province.

b. It should be remembered that this was really only a military government by another name, as provisional governments usually are. They are not always so, however. The provisional government of Cuba which began in 1906 was in no sense a military government, notwithstanding that army officers were appointed to important positions such as secretary of state and governors of provinces. Troops were on the ground, but they remained passive. They were ready for action if the necessity arose. In other words, the provisional government might have become a military government over night.

11. AMERICAN EXPERIENCES.—*a. Instances.*—Instances in our history of military government having been exercised by a foreign power upon our soil began with the British occupation of Boston, New York, and Philadelphia during the Revolutionary War period, and ended with the taking and holding of Castine, Maine, by the British in 1814-15. Instances of our own exercise of military government include that which was incident to the conquest of the provinces of Mexico by our forces in 1846-7, the government of enemy territory during the Civil War, the occupation of Cuba, Porto Rico, and the Philippines during the Spanish-American war, and our latest experience in the government of occupied Germany.

b. Analysis.—As above indicated, the United States has had much and diversified experience in the exercise of military government. Fortunately military government has been exercised by our enemies in this country very little. In the Mexican War we governed, very loosely it is true, the whole Republic of Mexico, a Spanish-speaking people accustomed to Spanish law; but as the object of the war had been gained as soon as the Mexican Army was overthrown, the military government itself was a mere incident of the war. In the Civil War we established military government in Tennessee, Louisiana, and other southern states, as our armies progressively occupied them. In Porto Rico we governed a territory for a considerable period of time

with the knowledge that the territory would be permanently our own. In Cuba we governed a territory which we held temporarily in trust, with the certain knowledge that we should soon withdraw, and that when we relinquished the occupation we would endeavor to leave there a government by the people capable of maintaining itself. In the Philippines, conditions were entirely different from any heretofore mentioned. The exercise of military government was complicated by the fact that we had on our hands almost continuous insurrection which at times involved almost the whole of the Islands. In our latest experience, we governed occupied Germany with the idea that we were going to turn back the occupied territory to the mother country.

c. Classification.—An examination of the foregoing experiences indicates that they are subject to classification into three typical situations, as follows:

First: A situation in which, as in the case of Porto Rico, New Mexico, and California, the conqueror contemplates permanently retaining the occupied territory as his own.

Second: A situation in which, as in the case of Cuba, the conqueror does *not* contemplate annexing the occupied territory, but instead is committed to the course of separating it permanently from its former possessor and setting it free as soon as it is able to stand alone.

Third: A situation in which, as in the case of Germany and Mexico, the conqueror intends neither to retain the occupied territory nor to separate it from its former possessor, but entertains from the beginning the intention of turning it back to its former possessor as soon as the object which brought about the occupation has been accomplished.

12. Probable Future Situations.—*a.* It is reasonably certain that any future exercise of military government by the United States will be under one or another of these three situations. Officers who are in training to become our general staff officers and future high commanders should, therefore, familiarize themselves with the details of handling each of the above three situations, in order that they may be better equipped for the performance of their duties in the event that they should suddenly (as is usually the case) be confronted with the task of administering military government over occupied territory.

b. Actual historical examples of these three typical situations have been extracted from our own national expe-

riences and will be presented successively in the next three sections of this chapter in a way designed to bring out the essential differences, good points, and weaknesses of each. It is believed that this method will disclose the underlying principles involved and enable us to arrive at a decision as to a satisfactory method of handling each situation.

SECTION II

Military Government in Porto Rico

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13. THE PROBLEM IN GENERAL.—As a result of the military occupation of the territories acquired in the war with Spain, our Army found itself in control of millions of people of foreign races and languages, whose political institutions were essentially different from those of their conquerors. The despotic nature of the prior Spanish regime, however, enabled American military rule to be instituted without serious shock to the political feelings of the inhabitants.

14. DIVISION INTO PERIODS.—The military government exercised by the United States in Porto Rico may be considered as divided into three periods, as follows:

First: From the beginning of the conquest of the island until the cessation of hostilities on August 14, 1898.

Second: From the cessation of hostilities until the ratification of the treaty of peace on April 11, 1899.

Third: From the ratification of the treaty of peace until the transfer by the military governor on May 1, 1900, of the control of the civil affairs of the island to the first civil governor of Porto Rico appointed under the Act of Congress approved April 12, 1900.

15. How the Periods Differed in Character.—The first period was one of actual belligerency. The second was a period of technical belligerency only. The third period was one in which the occupation was no longer hostile in fact, there being neither an actual nor a technical public enemy. The military governor nevertheless continued during the third period to legislate (issue orders) by way of effecting changes in codes with the same freedom as during the first and second periods. Some of these changes were of a very radical character, and the authority of the military governor so to legislate after the treaty of peace had become effective was seriously questioned. Congress, in finally providing for the organization of a civil government for Porto Rico, however, effectively settled the matter by ratifying the modifications in laws and ordinances that had been made by military orders during this period.

16. Legal Aspect of the Third Period.—Congress can declare war, but it cannot declare peace. The latter power is Constitutionally vested in the President, subject to ratification by a two-thirds vote of the Senate. The Treaty of Paris at the close of our war with Spain provided that Congress should determine the civil rights and political status of the native inhabitants of Porto Rico, but Congress adjourned, after the treaty had been ratified, without substituting a government of its own creation. The situation thereafter was really parallel with that which had previously prevailed in New Mexico. There, it will be remembered, the existence and operations of the agencies established by the military were held by the Supreme Court of the United States to be valid, even after the ratification of the treaty of peace terminating the war, until expressly revoked or modified by direct legislation of Congress, the provisional government being regarded as exercising its power in the meantime through delegation by Congress. In some quarters it was thought that there was a difference between that

situation and the one in Porto Rico in that, in the latter case, the treaty of peace specifically provided that *Congress* should determine the rights, etc., of the natives of Porto Rico. The question was much discussed whether, in view of this provision, the determination could be made by a military governor or by any other agency than Congress. As a matter of fact, the provision in question added nothing to the power already vested in Congress by the Constitution. The Supreme Court of the United States had already previously established the principle that military government is legal and effective until superseded by Congress or the President (Cross *vs.* Harrison, 16 How. [U.S.] 164). The same court subsequently, in the case of Dooley *vs.* United States (182 U. S. 222), upheld the continuing authority of the military government in Porto Rico after the ratification of the Treaty of Paris and up until the time when Congress, by suitable enactment, determined upon and established a civil government in the occupied territory. The exercise of military government necessarily carries with it the authority to create or sanction such agencies (courts and officials) and issue such orders as may be necessary to preserve order in the conquered territory and protect the inhabitants in their persons and property during the military occupancy. As already stated, Congress, when it did act, simply ratified the laws put into effect by the military governor, this giving them the same finality as if Congress had initiated them.

17. Reason for Ratification by Congress.—The legislative changes effected by the military government in Porto Rico were ratified by Congress because of the wisdom and care and foresight that had been exercised by the military government in bringing the changes about. It was definitely known that the territory was to be retained by the United States. It was also definitely known that Congress, having once adjourned without providing a governmental system for Porto Rico, would no doubt provide such a system at its next session. The government had to be administered in the meantime. The manner in which the military governor of Porto Rico proceeded holds some valuable lessons for the military commander who may be confronted with

such a situation in the future, particularly with reference to how he should set about his task and what should be his guide.

18. Governmental Reforms.—Due to the unfortunate situation which had been brought about in the island by the inefficiency and inadequacy of the preceding Spanish regime, immediate governmental reforms were urgently needed. But who was to determine what changes should be made? Clearly, the military governor had the *power* to make the changes, but that is not the point. Under the American Constitution, the whole theory of government is based upon the principle that the people themselves are to make and enforce their own laws. Guided by this principle, the military governor at the beginning of the third period appointed two advisory boards (10 members) on governmental reforms. These were composed exclusively of distinguished citizens of Porto Rico. Counsel was also taken with many other public men who were known and distinguished for intelligence and patriotism. Before instituting changes of any moment, however, it was necessary to lay the foundation upon which the new governmental stucture was to be built.

19. Plan of the New Government.—*a*. It was manifest that the new military government organization should correspond as nearly as possible to the civil governmental organization which would, in due course of time, be established by Congressional enactment. It was reasonable to suppose that Congress would ultimately provide a governmental system patterned, as nearly as might be, after that of the Territories of the United States. The conception of the military governor, therefore, was that the territorial government which Congress would be likely to establish in Porto Rico would consist of a governor, a legislature, and a judiciary (three co-equal though independent branches), a secretary of state, an attorney general, a treasurer, an auditor, a bureau of public works, a bureau of agriculture, a board of charities, a board of education, and a few minor branches.

b. Because of the constructive problem thus presented for solution, the third period of the military government is by far the most interesting and instructive of the three. Before proceeding further, however, it would be well to go back to the beginning of the occupation of the island by the American forces and see what proclamations and orders were issued by way of introducing the military government to the people and advising them as to their duties and obligations under it.

20. Initial Proclamation and Supplemental Orders.—*a.* On July 28, 1898, fourteen days before hostilities ceased, General Miles issued a proclamation which provided in part as follows:

> "The first effect of this occupation will be immediate release from your former political relations, and it is hoped a cheerful acceptance of the Government of the United States. . . . it is not our purpose to interfere with any existing laws and customs that are wholesome and beneficial to your people so long as they conform to the rules of military administration and of order and justice."

b. The next day, in amplification of his proclamation, General Miles published to the people of Porto Rico the identical instructions which President McKinley had earlier issued to the military commander in Cuba, and which already had been published to the Cuban people, these instructions being equally applicable to the situation in Porto Rico at this time. These instructions will be examined more fully in connection with the study of the military government of Cuba which will be taken up in the next section. (See par. 32.)

21. Local Conditions.—The conditions existing immediately after the invasion and for some time after hostilities had ceased were deplorable. The most important edifice in each pueblo was a church, the next in garrisoned towns was the barracks for the troops, and the third was usually a theater. These were all government buildings. Prior to 1899, there did not exist in all Porto Rico a single building that had been erected as a schoolhouse. The local laws formed an admirable code, designed to secure and protect the rights of the citizens, but they were applied in-

adequately. The Spanish regime had been essentially a military dictatorship with almost supreme power delegated to one man, the captain-general, a personal delegate of Spanish royalty and sovereignty. The codes contained provisions specifying when and how appeals to the Crown against the action of the governor and other authorities could be taken, but there is no record of a successful appeal of this kind ever having been made upon any important question. There was a state religion, the clergy being officers of the government. All legislative powers, even the to smallest details, were reserved to the Spanish sovereign and his ministry. All appointments to office were controlled from Madrid. There had been no possibility of local initiative in any function of government save by petition. It is not surprising, therefore, that honest and efficient municipal government should not exist. In fact it would have been a miracle if, with all the constraints and inspections to which the local authorities were continually subjected, good administration had ever been found.

22. The Judicial Situation.—The matter of applying the local laws did not cause much difficulty during the first two periods of the military government, because the laws of war were available to the military commander and were applied through courts-martial and military commissions. This rendered enforcement easy, prompt, and effective. But the employment of these military instrumentalities as a means of preserving order amongst the civil population was discontinued at the close of the second period. After the ratification of the treaty of peace it was regarded as advisable and necessary to resort to local tribunals and local laws for preserving the peace and adjusting questions affecting civil rights. But the questions as to what were the local laws, and what was the jurisdiction of the local courts, gave considerable difficulty. Volumes of statutes were at hand, also volumes of court decisions constituting precedents, but all were printed in a foreign tongue and the local judges understood about as little of Anglo-Saxon ideas of the administration of justice and good government as did the American military officers of the local laws and procedure.

23. Laws Which Automatically Became Obsolete. —Such local laws as were inherently incompatible with the fundamental principles of our theory of government, as expounded in the Constitution of the United States, went out of existence automatically when the sovereignty of the island was relinquished to us by the Spanish Crown. (See Sec. I, par. 2 *c* of this chapter.) A good statement as to the laws which automatically become absolete in such a situation, and those which remain in effect until changed, is contained in Pacific Railway Co. *vs.* McGlinn (114 U. S. 542), as follows:

> "It is a general rule of public law, recognized and acted upon by the United States, that wherever political jurisdiction and legislative power over any territory are transferred from one nation or sovereign to another, the municipal laws of the country—that is, laws which are intended for the protection of private rights—continue in force until abrogated or changed by the new government or sovereign. By the cession public property passes from one government to another, but private property remains as before, and with it those municipal laws which are designed to secure its peaceful use and enjoyment. As a matter of course, all laws, ordinances, and regulations in conflict with the political character, institutions, and constitution of the new government are at once displaced. Thus, upon a cession of political jurisdiction and legislative power (and the latter is involved in the former) to the United States, the laws of the country in support of an established religion, or abridging the freedom of the press, or authorizing cruel or unusual punishments, and the like, would at once cease to be of obligatory force without any declaration to that effect; and the laws of the country on other subjects would necessarily be superseded by existing laws of the new government upon the same matters. But with the laws affecting possession, use, and transfer of property, and designed to secure peace in the community, good order, and promote the health and prosperity, which are strictly of a municipal character, the rule is general that a change of government holds them in force until, by direct action of the new government, they are altered or repealed."

A knowledge of this principle is peculiarly essential in handling a situation such as that which obtained in Porto Rico during the third period.

24. Laws Which Required Immediate Amendment. —There is another class of laws, which, though they become obsolete by the transfer of sovereignty, nevertheless require new statutes to take their place. One example of this class was the provision in the local code in Porto Rico specifying when and how appeals to the Crown against the action of

the Spanish governor-general and other authorities could be taken. The mere passing of this statute out of existence would not provide a means by which appeals could thereafter be made. Other local statutes provided that in certain cases the opinion of the Minister of Justice of Spain should prevail and govern. In some cases final appeal to the Supreme Court in Madrid was required, this tribunal to render sentence. Reference of some administrative questions to the minister of the colonies was obligatory. Provisions of this character obviously could no longer remain in force. Sometimes they were wholly inapplicable, sometimes it was physically impossible to follow the prescriptions, and sometimes to have done so would have violated or impaired the rights of the people. It was therefore necessary for the military commander immediately to intervene in such cases and provide new means through which the administration of justice could be made effective.

25. OTHER LEGISLATION.—*a.* The first important order was that published by General Miles making applicable to Porto Rico the instructions of the President, of July 13, 1898, respecting Cuba. The next was General Brooke's order of October 18, 1898, one paragraph of which forbade the exercise of jurisdiction by the criminal courts over any crime committed by or upon any officer, soldier, or camp follower belonging to or attached to the Army. The maintenance of peace and good order by commanders of troops was enjoined. Another paragraph announced the supremacy for the time being of the military authorities and the intention of the commanding general to abstain from interference with the people so long as they yielded obedience to the temporary military government. The civil authorities were promised support in the punishment of wrongdoers. Another important provision announced that the provincial and municipal laws affecting the settlement of private rights and providing for the punishment of crime were to be enforced as formerly, unless incompatible with the new conditions in which contingency they would be suspended. Officers of the insular and municipal governments were required to take an oath of allegiance to the United States or suffer

removal. The local constabulary and police were recognized, protection for public and private property was promised, and the freedom of the people to pursue their ordinary avocations was assured.

b. On the 27th of October, an order was issued repealing the local law concerning judicial limitations. Another order of the same date abolished a tax which had previously been required to be paid by means of stamped paper. Still another abolished a local tribunal known as the court of administrative litigation. These are the first instances we have of local laws being changed by military orders. The change respecting judicial limitations was indispensable because the law which was displaced required a judicial procedure which was repugnant to the laws and rules of the United States. The stamp tax could still have been retained without interfering with any law of the United States, written or unwritten, and the administrative court could have continued its functions without any technical impropriety or illegality.

26. LEGISLATIVE ERRORS.—*a.* Not all the laws enacted by military orders seem to have been good ones. For instance, on April 22, 1899, the publication of instalments of a new code of school laws, drafted by the director of public instruction, was begun and continued at intervals for about six weeks. This code, when finished, was complete, and superseded entirely the pre-existing statutes on that subject. Some provisions of this code seem to have been unwise, and others were not applied at all because they were not adapted to the existing conditions. This attempt at wholesale legislation was premature. A careful and painstaking study of local conditions and laws, occupying perhaps many months, should have preceded any attempt at sweeping changes on a subject so important and difficult as that of the public instruction of a million people of foreign origin.

b. An order was published early in 1899 prohibiting the foreclosure of mortages on agricultural property and buildings for one year from January 19, 1899. At the end of that period, the governor was beseiged by both sides, one

for continuance and the other for the non-continuance of the prorogation. It was subsequently twice extended by the Secretary of War. During this time no landowner could be compelled to pay his secured indebtedness. Since the lender was debarred from making collections, his security was thus impaired or destroyed, and he would make no more loans. The agriculturists, who had suffered very severely from storms which had visited the island the previous year and whose farms were unproductive, were thus without credit. A state of complete paralysis resulted. Cultivation was neglected, and the fields in all the coffee districts returned to mere jungles.

c. On March 23, 1899, an order was published requiring all wages and salaries to be paid in American money instead of in provincial currency. This order had the effect of increasing the cost of personal services 40% over the rates previously paid.

d. On May 2, 1899, the existing laws were changed respecting the following: (1) hours of labor—eight hours out of twenty-four being declared to be a day's work; (2) taxation of wages and salaries—all being exempted; and (3) qualification of councillors—only taxpayers being allowed to be members of town councils. The order limiting the day's work to eight hours caused much controversy and gave rise to much complaint on the part of the farmers and others employing labor. A day's work had always been from nine to twelve hours, and the radical change greatly disturbed the industrial and agricultural interests. The military governor was appealed to for relief, and, on May 13th, published a ruling in which the employed and their employers were reminded that while the number of hours in a legal day had been fixed, there was no inhibition against any agreement by contract between the parties for a greater or lesser number of hours, nor against any agreement under which the employee should be paid by the hour.

e. One of the things which appeared to Americans to be a great hardship to the Porto Ricans was the fact that the Spanish regime made no provision for a writ of habeas corpus. Consequently, on May 31, 1899, an order was

issued authorizing any judge higher than a municipal judge to issue such writ, on the petition of any person restrained of his liberty. The privilege remained practically a dead letter. The natives did not file petitions, and neither the people nor the judges seemed to comprehend the purpose of the writ. There were but two instances during the military government of attempts to take advantage of it.

f. On May 6, 1899, there was published a long order of thirty-three paragraphs, the first of which established a society for the prevention of cruelty to animals. The remaining thirty-two paragraphs consisted of regulations, the last of which gave the society power to change its regulations at will. So far as known, nothing was ever accomplished by this order and the society seems to have consisted of but a single individual.

27. DANGERS TO BE GUARDED AGAINST.—*a. Ill considered or profuse legislative changes.*—Those who have had little experience in governing alien peoples are inclined to be intolerant of the laws, systems of administration, racial characteristics, and traditions of annexed peoples. The tendency is to try to pull down and upset rather than to adapt and adjust the old laws to the new conditions. It should be borne in mind that some important features of the Latin codes found in force in Louisiana, New Mexico, and California have been preserved by Americans; that the civil code of France found by the English in Quebec is still enforced in the Canadian province of that name; and that the laws of Mauritius inherited from France, and the codes of Holland established in Guiana, are still largely the laws of the land in those places. But all have been changed and adapted to meet the conditions of the new sovereignties.

b. Extensive employment of foreign personnel.—Our tendency has been to employ too many Americans in connection with the exercise of military government over foreign territory. The natives as a rule neither speak English nor understand American methods. What they have learned of their duties usually has to be unlearned, and generally they are less efficient than Americans. The result is that the

latter, who will usually be on hand seeking office in great numbers, are frequently preferred to the natives. The natives will amost invariably regard such appointees unfavorably and even with suspicion or hatred.

c. Granting autonomy to municipalities too soon.—The situation which obtained in Porto Rico in this respect will no doubt be duplicated in any situation of this class which might arise. Of necessity, the building of the new governmental system was slow. That of the central government was established first and began operating before the governments of the municipalities could be organized. All along, the inhabitants had been clamoring for self-government. The proclamation early issued by General Davis during the third period contained, among others, the following provisions:

> "A very considerable portion of the population calls for the institution of changes that may confer self-government and full autonomy. . . . When the municipalities or towns have demonstrated their capacity and ability to govern themselves as do all orderly and lawabiding communities, . . . when justice and right shall reign supreme and local affairs are honestly administered, . . . the next step, an insular legislature, should be an easy one and the civil functions of the military commander should cease. . . . His best and most earnest efforts will be directed to the difficult task of making ready this island for a territorial regime when Congress shall be ready to enact it."

d. Yielding too much to pressure from foreign inhabitants.—There will always be strong pressure of this kind, especially from inhabitants who are citizens or subjects of the conquering state, and there is always danger that yielding too much to such pressure will create suspicion and distrust in the minds of the native inhabitants. It should therefore be firmly guarded against. Sometimes, however, certain changes demanded by foreign elements in their own interests can not well be denied. Many citizens of the United States resided in Porto Rico during the period under consideration, and naturally they objected to having their property or liberty jeopardized in native tribunals; yet after the state of war ceased there were no other courts, it was believed, that could legally determine their causes. The pressure brought by them for changes in objectionable

laws was great. On their side was the argument that all hope for the industrial regeneration of the island was futile unless foreigners cast their lots with the inhabitants and supplied capital in large amounts for investment and development. They urged that capital would not be forthcoming so long as investors were liable at any time to be imprisoned on trumped-up charges and caused to languish in jail, *incommunicado*, while the cases dragged their slow length through the local courts. They demanded the right of trial by jury, and that the law's delays, which were of world-wide notoriety in Spanish countries, be brought to an end. Some changes were made pursuant to their demands. As the necessity for each change became evident, a careful investigation of its special features was instituted, all parties at interest were heard, projects for amendment were drawn up and corrected drafts submitted, and finally a decision would be reached and the change, if decided upon, promulgated by military order.

28. MILITARY GOVERNMENT ORGANIZATION.—*a*. The military governor of Porto Rico was provided with a military staff the functions of which were the usual ones pertaining to the army service, but many of these staff officers, as well as officers of the line, were constantly performing civil duties.

b. Only the staff that had direct relation to civil matters during the tour of the last military governor, General Davis, need be outlined.

c. The chief of staff was the principal military officer next to the military governor. He prepared and signed all orders, collected reports, and prepared briefs.

d. At the immediate head of civil affairs was an officer styled the civil secretary, a position analogous to secretary of state in a state or territory of the United States. Filling this position was a man distinguished for his learning and accomplishments and for his exact knowledge of the civil, industrial, and social status of Porto Rico. He also had a very extensive knowledge of the island's history, laws, and domestic institutions.

e. The membership of the advisory board on insular affiairs included nine of the most learned, reliable, and representative public men in Porto Rico.

f. There was a judicial board consisting of five lawyers, three of whom were Porto Ricans of well-known ability, leaders at the bar, who were fully competent to expound the local laws. Two Americans sat on this board, one a law judge of the United States Provisional Court and the other an Army judge advocate.

g. The native members of these boards were all Porto Ricans. They had generally been debarred from full participation in the government under Spain, but they had nevertheless been close observers of all that transpired and were well qualified to advise and assist the chief executive in his difficult position. Only one of them, the civil secretary, received any compensation.

h. All important questions affecting the civil administration were referred to the advisory board and its recommendations always were fully considered. Questions relating to the judicial administration were always referred to the judicial board. All questions and all board reports passed over the desks of the civil secretary and the chief of staff.

i. The other administrative officers in the military government were:

The board of prison control,	3	natives;	2	Americans
The board of public works,	2	" ;	1	"
The board of health,	2	" ;	4	"
The board of charities,	2	" ;	4	"
The board of education,	6	" ;	1	"

j. The civil secretary was at the head of the bureaus of state and municipal affairs, internal revenue, and agriculture. The auditor was an officer who had had considerable experience with the Treasury Department in Washington. The treasurer and the collector of customs were Army officers.

k. Questions touching legislation affecting any branch of the public service were always referred to the head officer of the corresponding judicial or administrative department for opinion and presentation of all relevant facts and conditions.

29. TRANSITION TO THE NEW CIVIL GOVERNMENT.—*a.* The Act of Congress providing for the organization of a temporary government for Porto Rico became a law on April 12, 1900. The new governor, a civilian, arrived at San Juan on April 28th. Under the law, the new executive and administrative heads of departments all had to be appointed by the President and confirmed by the Senate. By April 30th only two or three of these had been appointed and not one had qualified. The change had to go into effect the next day. It is interesting to note how the change was effected, for there is a United States statute which forbids the holding of any civil office by an officer of the Army on the active list, under penalty of losing his commission. A number of Army officers were holding positions which on and after May 1st would become civil offices. It was therefore necessary to arrange for their relief.

b. Though some of the departments and heads of departments had been given new names in the Congressional plan, the framework of the military government had been so organized that it was easily adaptable to the new form. It was agreed between the military governor and the new civil governor that while the former was still possessed of the power of appointment and legislation, he should reorganize the military government in some of its details, in such manner as might be necessary, by creating the administrative departments required by the Act of Congress and appointing civilians as acting heads of these departments. Accordingly, an order was published on April 30, 1900, creating six departments corresponding in name to the new departments required. Civil officers were then appointed by the military governor as acting heads of these departments and ordered to take charge of their duties on April 30th. These officials, having thus been legally appointed, legally held over and continued to perform their duties under the new government until their places were filled in the manner prescribed by law. The last order published by the military governor was dated May 1st, 1900, and announced the transfer of the government of Porto Rico to the civil authorities.

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Military Government in Cuba

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30. THE CUBAN PROBLEM.—*a.* In examining the manner in which our military government was exercised in Cuba, it should be kept in mind that we are dealing with the *second* type or situation, that is, one in which the conqueror did not contemplate annexing the occupied territory, but was committed instead to the course of separating it permanently from its former possessor and setting it free as soon as it might be able to stand alone.

b. The status of the island of Cuba was peculiar. The sovereignty of Spain thereover was ended by the war but was not formally transferred to the United States, for the latter refused to accept it. It was vested in the people of Cuba to lie dormant until a government could be organized in accordance with their wishes. The United States may be said, therefore, to have held Cuba in trust for the Cubans

until such time as they themselves could assume the responsibilities of an independent state. This fact, together with the generally improverished condition of the country, imposed an extraordinary task on the military governors and their subordinates. In addition to the development of an adequate government, founded on representative principles, amongst a people of no self-governing experience, the military government had to promote industrial conditions and give immediate relief to the distress existing throughout the island. Charities, sanitation, and education at once demanded extensive systems of administration for their accomplishment. The long-neglected roads and harbors had to be improved in order that agriculture and commerce might be encouraged.

c. The military government of Cuba was self-supporting throughout the entire period of occupation. Its expenditures, exceeding fifty millions of dollars, were mainly met by the customs of the island, which were collected by officers of the Army under regulations promulgated by the Secretary of War.

31. Division Into Periods.—For the purpose of convenience, this study of the military government of Cuba may be regarded as divided into periods as follows:

First: The period from the beginning of the conquest until General Brooke assumed command of the "Division of Cuba" on December 28, 1898.

Second: The period from the date on which General Brooke assumed command until General Wood succeeded to the duties of military governor on December 20, 1899.

Third: So much of General Wood's tour of duty subsequent thereto as may be necessary to bring out the organization and principal constructive acts of the military government administered by him.

32. General Orders No. 101, A.G.O., 1898.—From the standpoint of military government, the principal event of interest during the first period was the issuance of *General Orders No. 101, W.D., A.G.O., July 18, 1898*, publishing the following letter, dated July 13, 1898, from President McKinley to the Secretary of War:

"Sir: The capitulation of the Spanish forces in Santiago de Cuba and in the eastern part of the province of Santiago, and the occupation of the territory by the forces of the United States,

render it necessary to instruct the military commander of the United States as to the conduct which he is to observe during the military occupation.

"The first effect of the military occupation of the enemy's territory is the severance of the former political relations of the inhabitants and the establishment of a new political power. Under this changed condition of things the inhabitants, so long as they perform their duties, are entitled to security in their persons and property and in all their private right and relations. It is my desire that the inhabitants of Cuba should be acquainted with the purpose of the United States to discharge to the fullest extent its obligations in this regard. It will therefore be the duty of the commander of the army of occupation to announce and proclaim in the most public manner that we come not to make war upon the inhabitants of Cuba, nor upon any party or faction among them, but to protect them in their homes, in their employments, and in the their personal and religious rights. All persons who, either by active aid or by honest submission, cooperate with the United States in its efforts to give effect to this beneficent purpose will receive the reward of its support and protection. Our occupation should be as free from severity as possible.

"Though the powers of the military occupant are absolute and supreme and immediately operate upon the political condition of the inhabitants, the municipal laws of the conquered territory, such as affect private rights of person and property and provide for the punishment of crime, are considered as continuing in force, so long as they are compatible with the new order of things, until they are suspended or superseded by the occupying belligerent, and in practice they are not usually abrogated, but are allowed to remain in force and to be administered by the ordinary tribunals, substantially as they were before the occupation. This enlightened practice is, so far as possible, to be adhered to on the present occasion. The judges and other officials connected with the administration of justice may, if they accept the supremacy of the United States, continue to administer the ordinary law of the land, as between man and man, under the supervision of the American Commander-in-Chief. The native constabulary will, so far as may be practicable, be preserved. The freedom of the people to pursue their accustomed occupations will be abridged only when it may be necessary to do so.

"While the rule of conduct of the American Commander-in-Chief will be such as has just been defined, it will be his duty to adopt measures of a different kind, if, unfortunately, the course of the people should render such measures indispensable to the maintenance of law and order. He will then possess the power to replace or expel the native officials in part or altogether, to substitute new courts of his own constitution for those that now exist, or to create such new or supplementary tribunals as may be necessary. In the exercise of these high powers the commander must be guided by his judgment and his experience and a high sense of justice.

"One of the most important and most practical problems with which it will be necessary to deal is that of the treatment of property and the collection and administration of revenues. It is conceded that all public funds and securities belonging to the government in its own right, and all arms and supplies and other movable

property of such government, may be seized by the military occupant and converted to his own use. The real property of the state he may hold and administer, at the same time enjoying the revenues thereof, but he is not to destroy it save in the case of military necessity. All possible public means of transportation, such as telegraph lines, cables, railways, and boats belonging to the State, may be appropriated to his use, but unless in the case of military necessity they are not to be destroyed. All churches and buildings to be devoted to religious worship and to the arts and sciences, and all school houses, are, so far as possible, to be protected, and all destruction or intentional defacement of such places, of historical monuments or archives, or of works of science or art is prohibited, save when required by urgent military necessity.

"While it is held to be the right of the conqueror to levy contributions upon the enemy in their seaports, towns, or provinces which may be in his military possession by conquest and to apply the proceeds to defray the expenses of the war, this right is to be exercised within such limitations that it may not savor of confiscation. As the result of military occupation the taxes and duties are payable to the military occupant, unless he sees fit to substitute for them other rates or modes of contribution to the expenses of the government under military occupation, such as the salaries of the judges and the police, and for the payment of the expenses of the Army.

"Private property taken for the use of the Army is to be paid for, when possible, in cash at a fair valuation, and when payment in cash is not possible, receipts are to be given.

"All ports and places in Cuba which may be in the actual possession of our land and naval forces will be opened to the commerce of all neutral nations, as well as our own, in articles not contraband of war, upon payment of the prescribed rates of duty which may be in force at the time of the importation."

b. The foregoing order is, and bids fair to remain for years to come, a classic statement of the rules of international law applicable to situations of this kind. It was prepared by Professor John Bassett Moore, then and now one of the foremost international lawyers of the world. At that time, he was international law expert in the State Department at Washington, and, strange to say, he did not prepare the original draft of this order with the intent that it should be applied to Cuba or to Porto Rico, but intended if for General Merritt's guidance in the Philippines.

33. ARRIVAL OF GENERAL BROOKE.—*a.* General Brooke arrived in Cuba on December 27, 1898, and immediately published the President's order of December 13, 1898 (G.O. No. 184), creating the "Division of Cuba." He assumed command the next day. The transfer to him of the reins of government was made the occasion of an imposing ceremony

which took place shortly thereafter. Those present at the ceremony included the members of the United States Evacuation Commission, the military governor with his staff and principal military commanders, also nine Cuban generals and the Spanish governor. The latter made a speech relinquishing control to the United States Evacuation Commission. To this the chairman of that Commission, General Wade, made a brief reply at the conclusion of which he turned to the new military governor and transferred the administration of the island to him.

b. A large body of the Cuban army had asked permission to be present at this ceremony, but the request was vetoed because of the danger to life and property, the prevailing belief being that the excitement and passions of the people had not yet subsided sufficiently to be under control. Their celebration was postponed until February 24th, on which date General Maximo Gomez arrived in Havana to remain for several months, during which time he and his large staff and escort were permitted to occupy as guests of the government the summer residence of the governor-general with its subsidiary houses and grounds.

34. GENERAL BROOKE'S PROCLAMATION.—On January 1, 1899, General Brooke published the following proclamation:

"To the people of Cuba:

"Coming among you as the representative of the President in furtherance and in continuation of the humane purpose with which my country interfered to put an end to the distressing condition in this island, I deem it proper to say that the object of the present Government is to give protection to the people, security to person and property, to restore confidence, to encourage the people to resume commercial traffic, and to afford full protection in the exercise of all civil and religious rights.

"To this end, the protection of the United States Government will be directed, and every possible provision made to carry out these objects through the channels of civil administration, although under military control, in the interest and for the benefit of all the people of Cuba, and those possessed of rights and property in the island.

"The civil and criminal code which prevailed prior to the relinquishment of Spanish sovereignty will remain in force, with such modifications and changes as may from time to time be found necessary in the interest of good government.

"The people of Cuba, without regard to present affiliations, are invited and urged to cooperate in these objects by exercise of moderation, conciliation, and good will one toward another, and

a hearty accord in our humanitarian purposes will insure kind and beneficent government.

"The military governor of the island will always be pleased to confer with those who may desire to consult him on matters of public interest."

35. STAFF ORGANIZATION.—*a*. The staff of the military governor, who was also the military commander of the Division of Cuba, consisted of a Chief of Staff, two aides, one acting aide, an Adjutant General, one Assistant Adjutant General, a Judge Advocate, a Chief Quartermaster, a Chief Commissary, a Chief Surgeon, a Chief Paymaster, a Chief Signal Officer, and an Inspector General, also a Military Governor of the Province of Havana and a Chief of Customs Service.

b. The civil bureaus of the governor generalcy were taken over by members of the military governor's staff until proper civil officials could be selected and appointed.

36. GOVERNMENTAL REORGANIZATION.—*a*. It was found necessary at once to reorganize the various existing civil departments or secretaryships, and to reduce their number by combining several of the departments with others under one head. The finance department was not combined with any other. The departments, as reorganized, were:

The Department of State and Government.
The Department of Finance.
The Department of Justice and Public Instruction.
The Department of Agriculture, Commerce, Industries, and Public Works.

This reorganization was effected on January 11th, and the next day natives were appointed as chiefs of departments.

b. The plan of the military governor, as stated in his proclamation, was that the affairs of Cuba were to be conducted "through the channels of civil administration, although under military control."

c. The Department of Justice was subsequently separated from the Department of Public Instruction.

37. RETENTION OF CIVIL OFFICIALS.—At an early date it was announced that civil officials, however appointed,

would be retained in their positions, and that the military governor would thereafter make all appointments.

38. MUNICIPALITIES.—Steps were taken in the direction of establishing municipalities as the foundation of the governmental structure. The military governor appointed the principal municipal officers. The wishes of the people were ascertained as far as possible with reference to these appointments, and in most cases the commanding generals of departments were also asked to report upon the candidates under consideration. The wishes of the people in this respect were frequently disregarded, but only in cases where the military governor was convinced that there were good and sufficient reasons for not appointing certain candidates.

39. LAWS.—*a*. It will be remembered that General Brooke's proclamation of January 1, 1899, announced that the laws in effect on December 31, 1898, would be continued in force until modified or changed. The existing laws were found to be peculiar. In making changes great care had to be exercised, for a modification was likely to have such intricate connections with former laws as to nullify the modification itself or have other evil results. In other words, each revision required an examination of the law in all its past history. A wholesale revision of the code was not attempted, but each case was met as the necessity arose.

b. Various modifications believed to be necessary were put into effect after examination by the judicial department. One of the earliest and most important changes was the separation of the Church from the State by taking from the former and transferring to the latter certain powers formerly possessed by ecclesiastical courts in matters relating to divorce and nullification of marriage, and by providing that thereafter only the civil marriage would be legal. This aroused a storm of protest, both within and without the island. The people of Cuba grew to like the change, however, and, during the subsequent regime of General Wood, they declined to return to the old order of things.

c. There were also modifications of the law of libel. Pardons were granted for offenses against the so-called electoral laws. Pardons were also granted to certain persons under army and navy jurisdiction. Fees formerly paid to the government for the issuance of academic and professional degrees were abolished.

d. A bureau of pensions for the support of retired primary teachers was abolished. It was found that university professors past active age were allowed to appoint subordinates for themselves, then go back to live in Spain and draw the difference in salary the remainder of their lives. This practice was called *jubilacion.* Naturally the practice was early done away with. It was discovered that the Spanish authority, just prior to its relinquishment of control, had granted to teachers leaves of absence for periods of from six months to a year on half pay. This was at once corrected by order.

e. It is a significant fact that not all the changes that were made in the local laws of Cuba during our period of occupation were made by the military government. On December 9, 1898, an order of the President of the United States was issued establishing a customs service in Cuba and making sweeping changes in the local laws relating to the collection and control of customs revenues. The same order fixed and regulated the coasting trade. A revision of the laws respecting taxation was later prepared in Washington and ordered to be put into effect. (See par. 41 below.) The probable cause of all this intervention on the part of the central government is not clear, and is worthy of serious consideration. That it tied the hands of the military governor and had other evil effects is quite clear.

40. AGRICULTURE, COMMERCE, INDUSTRIES, AND PUBLIC WORKS.—*a.* Many requests were made by planters and farmers for assistance from the military government in the way of cattle, farming implements, and money, the latter to enable them to restore their houses. The matter was carefully considered, and, strange to say, the conclusion was reached that aid could not be given for the reason that the

rendition of governmental aid in such manner would smack of paternalism and might result in the implanting of a spirit alien to a free people. A system of loans through banks was proposed instead. This did not provide the cattle and farming implements of which the farmers were so sorely in need, for these were not to be had on the island.

b. The civil governmental organization soon took over the lighthouses from the military authorities. Engineers were sent out to make surveys of roads which would need repairing before the people of the sections penetrated by those roads could reach the markets with their products. Very little actual road improvement was accomplished during this period, however, the work being postponed from time to time in anticipation of the advent of the annual rainy season which so delayed its usual appearance in this instance that much valuable time was lost.

41. TAXES.—Finding the country more impoverished than he had anticipated, the military governor decided to remit all taxes due and remaining unpaid on January 1st. An inefficient tax-revision system was instituted on March 25th, and this, together with plan of furnishing certain state aid to municipalities, made a large drain on the customs receipts. On July 1st of the same year, a plan of taxation which had been prepared by the War Department was put into operation, but this, too, was unsatisfactory. It remained for the military government under General Wood to devise a suitable system.

42. VIEW OF GENERAL BROOKE AS TO GOVERNMENTAL PLAN.—*a.* The foregoing does not purport to include all of the important events that transpired during General Brooke's regime. Those mentioned have been selected for the purpose of giving an idea as to the organization employed and how it operated. There is grave doubt whether as much wisdom and foresight were displayed here as in Porto Rico in the direction of attempting to devise a government such as Congress would likely want to turn over to the Cuban people. General Brooke says in his report:

> "The kind of government to be established, and when, is not a subject which the military governor believes to be a matter which can be discussed in this report, if at all. Obviously, this must be determined by higher authority, to whom such matters properly pertain."

b. This furnishes a probable reason for the above mentioned intervention on the part of the central government at Washington in the affairs of the military government of Cuba. In the light of the subsequent action of General Wood, General Brooke's successor, and of General Davis in Porto Rico, it would seem that the better attitude for an Army officer to take in such a situation would be that it is a part of his duty to divine what Congress will probably do in the matter, and endeavor to shape his military government accordingly. In fact, if his work is well done and results in the establishment of a sound system, Congress will probably adopt and perpetuate what he has established, as it did in the case of Porto Rico. It is suggested, however, that there are two distinct roads to this result. One is by being a genius in that particular line or giving it intensive work and study, and the other is by keeping in close touch with public men and *knowing* what Congress likely will do. We know General Wood was very close to the President, and that he did not hesitate to make trips to Washington to talk things over.

43. VIEW OF THE NEW MILITARY GOVERNOR.—General Wood began his tour as military governor of Cuba on December 20, 1899. He immediately applied himself to his task with the conviction that he was possessed of authority sufficient to conduct the government of the island and institute such changes in the existing law and procedure, both in the general law of the land and of the municipalities, as he deemed necessary for the conduct of a just and stable government, ample to maintain order, give adequate protection to property and vested rights, and secure to the inhabitants of the island the greatest degree of liberty consistent with existing conditions.

44. GOVERNMENTAL ORGANIZATION AND OPERATIONS.—*a. Secretaryships.*—The new military governor had as civil as-

sistants four secretaries who formed a cabinet or council, as follows:

(1) *The Secretary of State and Government* was charged with the general supervision of the provincial and municipal administrations, consisting of six governors, one for each province, and one hundred twenty-eight *alcaldes* and municipal councils presiding over the municipalities of the island. He was also charged, under the military governor, with the supervision of such affairs and relations of a civil character as existed from time to time with other countries.

(2) *The Secretary of Justice and Public Instruction* was in charge of the administration of justice and responsible for its proper supervision. He was required to look into the character and qualifications of applicants for appointment in the department, and to him were referred all appeals for pardon, reduction of sentences, and charges against courts, judges, and various other representatives of the law. He was also actual head of the department of public instruction, including the University of Havana, the six provincial institutes, and the public schools of the island.

(3) *The Secretary of Agriculture, Commerce, Industries, and Public Works* was charged with the conduct and supervision of all public works, construction and maintenance of lighthouses, buoying of harbors, repair and construction of public buildings, examination of applications for authority to construct highways, private railroad wharves and fishing weirs, care of forests, supervision of mines, mining titles and grants, establishment of agricultural stations, registration of patents and trademarks, etc.

(4) *The Secretary of Hacienda or Finance* was charged with the collection of internal revenue, supervision of municipal finances, safeguarding and care of public buildings, enforcement of tax laws, payment of employees of the general government in the various departments, and the collection of rents for public lands and other government property.

b. Other services.—In addition to the departments above mentioned, the governmental organization included other services or activities as follows:

(1) The *customs service* was practically under the charge of American officials, most of them officers of the Army, with some civil assistants selected from the customs service of the United States, and many Cuban assistants who had had experience in the former customs service of the island.

(2) The *quarantine service* had been organized by and was in charge of the Marine Hospital Service of the United States. Officers of this service were stationed in the larger ports, while at many of the smaller ports, Cuban physicians were employed.

(3) The *postal service* was, in a general way, under control of the Postmaster General, and was almost wholly independent of the military government.

(4) The *telegraph and public telephone lines* were in charge of the Signal Corps of the Army.

(5) *Captains of ports.*—A United States naval officer, who was captain of the port of Havana, exercised general supervision

over all captains of ports of the island. At all ports except Havana the collectors of customs acted as captains of ports.

(6) *Charities and hospitals* were mostly under the commanding generals of the different departments. This was also true of prisons in all that pertained to their maintenance and sanitation. Sanitary work in all large cities, especially in garrisoned towns, was entirely under military officers, and throughout the island it was under their general charge.

(7) The *auditor* for the island was a civilian American, and the system of accounting and auditing employed was similar to that of the United States Treasury Department.

c. Personnel.—All the foregoing departments or activities were under native Cubans except as otherwise stated. Each of the four general departments was supplied with its own personnel, necessarily quite numerous, and, in addition, had throughout the various provinces of the island assistants and deputies in charge of the local administration of affairs pertaining to the general government.

45. MILITARY ORGANIZATION.—The island was divided into four military departments, each commanded by a general officer of the American Army. In addition to having the usual military control and administration of the military forces under his command, each of these commanding generals had charge of public works to a certain extent, and also exercised general supervision over charities, hospitals, jails, etc., and was charged with a general supervision of the civil government within his department. Each obtained funds for public works, charities, etc., from funds of the general government, on estimates approved by the military governor.

46. PROVINCIAL CIVIL ADMINISTRATION.—The military governor appointed in each province (Santiago, Puerto Principe, Matanzas, Santa Clara, Habana, and Pinar del Rio) a civil governor who was head of the civil administration of the province and who reported direct to the Secretary of State and Government. It was through these officials that the military governor exercised control over the municipalities. Five of these six civil governors were generals in the Cuban army, three were American citizens, and

one was an officer in the Medical Department of the United States Volunteers. All six of them were native Cubans.

47. Efforts to Reduce the Number of Municipalities.—The municipalities of the four western provinces were more numerous than necessary, thus increasing taxes and the burden of the general government without compensating benefit. Their consolidation into larger townships was proposed, and it was shown that this would result in considerable advantage, but the suggestion met with great and successful protest from *alcaldes* and other officials who were reluctant to surrender their mantles of authority and their salaries. It should be remembered that such measures always are considered radical and usually meet with great opposition.

48. Reduction of Police Force.—The various police forces were paid for by the general government, and were so large and expensive that they had to be cut down. Though not at all needed in such large numbers, the people seemed apprehensive and resisted the reduction. It was nevertheless accomplished, but this was done gradually and progressively so as to cause as little alarm as possible, until assistance from the general government was finally withdrawn entirely.

49. Sanitary Work.—This was an outstanding feature of the accomplishments of this regime. Sanitary measures at first met with strenuous objection, but the complaints grew less and less frequent, as the example set by our troops aroused interest and brought understanding, until finally objections were replaced by complaints of existing nuisances in the form of unsanitary places, and by frequent requests for the vigorous corrective intervention of the sanitary department. The people even sought to maintain the sanitary service after our withdrawal from the island.

50. Supplying Horses, Cattle, and Farming Implements.—It will be remembered that when the farmers asked the preceding military governor for cattle and farming implements, he denied their request because he thought it would smack of paternalism and would therefore be dangerous as

implanting a spirit alien to a free people. He offered them loans through banks instead. The trouble was that they could not till their farms with money; for cattle, horses, and farming implements were not to be had on the island. General Wood sent a representative to Mexico with government funds to purchase and bring back one hundred thousand dollars' worth of cattle, and allowed the natives to whom they were supplied easy terms for reimbursing the government. Horses were also purchased and distributed. Plows, hoes, machetes, and axes were likewise purchased and distributed in the same way. The effect was excellent, both by way of giving the people renewed hope and courage and in showing them that the attitude of the government was to make every possible effort in their behalf.

51. The New Electoral Law.—A new electoral law was drawn up by a voluntary commission appointed by the military governor on February 16, 1900. Two Americans sat as members. Majority and minority reports were submitted. The latter, notwithstanding that it was the minority report, was adopted. Municipal elections were held under it on June 16, 1900. The election went through practically without opposition, but, unfortunately, the Autonomist (conservative revolutionary) Party, foreseeing defeat, withdrew. This resulted in the election of the extreme revolutionary element everywhere. Those elected generally had made pre-election promises which they could not fulfill, so their popularity did not last long. They were unfit and inexperienced. They tried to keep their promises by appointing an unduly large number of clerks, police, etc., so they not only lost the confidence of the business and industrial element but also imposed a heavy financial burden on the central government. Some *alcaldes* were suspended by the military government, some were removed, and others were charged with serious offenses.

52. The Constitutional Convention.—*a*. General Wood visited Washington during the month of July, 1900, and presented the Cuban situation to the President and Secretary of War. It was decided that the time had arrived for taking preliminary measures for a general election of

delegates for the purpose of drawing up and adopting a constitution for Cuba, and agreeing on the relations which they desired should exist between that island and the United States. The election was accordingly ordered, and was held on September 15, 1900. It was without disturbance, and *was also without general interest.* Again the conservative element displayed practically no activity, in spite of urgent requests, visitations, and conferences by the military governor, and in spite of a minority representation clause in their favor which had been inserted in the regulations.

b. The Constitutional Convention, which consisted of 31 members apportioned among the six provinces according to population, opened on November 5, 1900. In this connection, it should be remembered that Congress had, by its joint resolution of April 20, 1898, declared:

> "That the people of the Island of Cuba are, and of right ought to be, free and independent.
>
> "That the United States hereby disclaims any disposition or intention to exercise sovereignty, jurisdiction, or control over said island except for the pacification thereof, and asserts its determination when that is accomplished, to leave the government and control of the island to its people."

The military governor opened the Convention by a brief address during which he made the following significant remarks:

> "The constitution must be adequate to secure a stable, orderly, and free government. . . . The fundamental distinction between true representative government and dictatorship is that in the former every representative of the poeple, in whatever office, confines himself strictly within the limits of his defined powers. Without such restraint there can be no constitutional government."

c. He further advised them that when the constitution had been framed they were then to formulate what in their opinion ought to be the relations between Cuba and the United States, and made it clear that such action on their part would not be final, but that the United States government would be expected thereafter to take such action as would lead to a mutual agreement or treaty between the two countries.

53. The Intervention of 1906.—The intervention of 1906 was not a part of General Wood's regime, but is inserted here as a matter of interest because it was made pursuant to the terms of the treaty which grew out of the circumstances just above mentioned. Not being established under or by virtue of the rules of war, but by virtue of a treaty, it was not a military government at all. Only a few Army officers were employed, and these did not derive their power from or through the military commander. The army of something like 10,000 men that went to Cuba remained passive so far as the exercise of government was concerned, but stood ready to prevent any uprising or insurrection if necessary. (See Sec. I, par. 10 *b* of this chapter.)

54. Taxes on Incomes.—On January 22, 1900, General Wood appointed a commission to consider the subject of taxation in all its aspects, and in some quarters it was hoped that the commission would recommend the abandonment of the existing tax on incomes. This they failed to do. The decision probably was a wise one, even if for no other reason than that there had already been many radical changes in the methods of administration, and so many of the new officials were without experience that each change meant confusion and delay in the conduct of public business. The United States government subsequently enacted its own income tax law.

SECTION IV

Military Government in Germany

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55. THE ALLIED SITUATION.—*a.* The exercise of military government now to be considered began when the Allies moved into Germany on the morning of December 1, 1918, pursuant to the provisions of Articles II and V of the Armistice Agreement. The occupation of the territory on the left bank of the Rhine was by garrisons holding the principal crossings of that river (at Mayence, Coblence, and Cologne), together with bridgeheads at those points of a thirty kilometer radius on the right bank, and by garrisons holding the other strategic points of the area. On the right bank there was also reserved a neutral zone between the river and a line drawn parallel to it, ten kilometers from the bridgeheads, extending from the Dutch to the Swiss frontier.

b. For convenience of administration, the occupied territory was divided into four zones—American, British,

French, and Belgian, with headquarters at Treves, Cologne, Nayence, and Aix-la-Chapelle, respectively. The commanding general of each zone was the sole authority therein, except that all the zones collectively were under the commander-in-chief of the Allied armies of occupation.

c. When the Treaty of Versailles entered into effect on January 10, 1920, one of its conventions, commonly referred to as the "Rhineland Agreement," purported to vest the governing control of the occupied territory in a civilian body known as the *Interallied Rhineland High Commission.* (But see next paragraph.)

56. DIVISION INTO PERIODS.—For the purpose of convenience, therefore, our own exercise of military government in occupied Germany may be regarded as divided into periods as follows:

First: From December 1, 1918, when the Allies moved into Germany, up until January 10, 1920, when the treaty of Versailles entered into effect.

Second: That period subsequent to January 10, 1920, during which, due to the fact that the United States did not ratify the Treaty of Versailles, the military government in the American zone was exercised concurrently and in cooperation with that exercised in the other zones by the Interallied Rhineland High Commission. (See paragraph 80, *infra.*)

57. ATTITUDE OF THE GERMAN PEOPLE.—The friendly manner in which the Allied troops who effected the occupation of German territory were received by the inhabitants seemed at the time as if it might be an insidious form of propaganda. The professions of democracy heard on every side in those early days sounded blatant and insincere, yet it is quite probable that there had actually been a change in the psychology of the people. Hunger, disappointment, the collapse of political and military idols, and the strain of four years of war had done their work. There seems to be no doubt but that the peasants, and at least the workers amongst the other elements of the population, were really desirous of returning to the peace and quiet employment they had known in pre-war days. German officials, with few exceptions, cooperated to the full extent of their authority in making the occupation bear as lightly upon the civil population as the exigencies of the time would permit.

58. Adaptability of the German System to Military Government.—*a*. The German civil administration which preceded the military occupation has been described as an army in civilian clothes. The Government had been built upon military principles. Orders issued by the cabinet of the central government were passed down from level to level until eventually they reached the people in the form of regulations for their guidance. The chief officials of cities and towns were either appointed by higher authority or had to be approved by higher authority. Such a system is foreign to the spirit of American political life; but, regardless of the reasons that may be marshaled for or against such a form of government, it is evident that it was peculiarly adaptable to the wishes of the occupying military forces. The people were intelligent, were accustomed to obeying authority, and knew what it meant to be rigidly governed. In these respects our military government in occupied Germany differed essentially from all others we had theretofore exercised. It also differed from those heretofore considered, in that the occupation did not take place until after active hostilities had ceased. A further important difference, of course, was that in this case our intention was not to annex the occupied territory or free it from the mother country, but to turn it back to its former possessor as soon as the object which brought about the occupation had been accomplished. In other words, this military government experience is an example of the *third* type or situation mentioned in paragraph 11 *c*, Section I, of this chapter.

b. Under the armistice agreement, the local officers were to remain in the exercise of their duties, the result being that a minimum of work, comparatively speaking, was imposed upon our occupying forces.

59. Marshal Foch's Proclamation.—The following proclamation of Marshal Foch to the people of occupied Germany was received by our Third Army during its advance to the Rhine:

"PROCLAMATION OF THE COMMANDER IN CHIEF OF THE ALLIED ARMIES, TO THE INHABITANTS OF OCCUPIED TERRITORY.

"The Allied military authority herewith assumes command of the country.

"It demands strictest obedience from all.

"The laws and regulations in force at the moment of occupation will be continued insofar as they do not affect our rights or our safety.

"Public services will continue to operate under the direction and control of the military authorities.

"Public officials will be held responsible for the conscientious and honest discharge of the duties with which they are entrusted. The courts will continue to dispense justice.

"The inhabitants must abstain in word and deed from any act of hostility, direct or indirect, toward the Allied authorities. They must obey the requisitions which may be made of them in conformity with the law.

"Every person guilty of a crime or a misdemeanor, whether as a principal or as an accomplice, will be immediately arrested and brought before a court-martial.

"Every infraction of the regulations issued, as well as every refusal of obedience to orders, will be severely punished.

"The present proclamation declares the occupation of the country by the Allied armies. It points out to each one his duty which is to aid in the reestablishment of civil life by work, calm, and discipline. Let all persons diligently discharge such duties."

This document was essentially a formal one, the phrases of which permitted wide interpretation by each of the several allied commanders. It brought home to the civil population the essential truth that the Allies were a unit in occupation as well as in active hostilities, yet it wisely permitted each nation to treat the defeated enemy in accordance with its own national policy and characteristics.

60. HIGH COMMAND ORGANIZATION.—Many commissions and sub-commissions were organized by Marshal Foch for the performance of duties falling to the High Command. The principal commissions were as follows:

a. The Permanent Inter-Allied Armistice Commission, appointed under paragraph XXXIV of the armistice provisions which states that

"to assure the best execution of the present agreement, the principle of a Permanent International Armistice Commission is admitted. This Commission will perform its duties under the high authority of the military and naval commander in chief of the Allied armies."

This commission was charged with the general supervision of the armistice conditions and with formal communi-

cations to the German government. Seven sub-commissions operated under this commission.

b. The Inter-Allied Commission for the Rhineland.—This was the most important of the sub-commissions above referred to. Its importance lay largely in the fact that General Payot, an unusually able French soldier and a member of Marshal Foch's staff, was appointed as its chairman and was put in general charge of affairs in the occupied territories. This Commission appointed fourteen subordinate commissions which it charged with the supervision of the more important phases of the occupation.

c. Inter-Allied Economic Commission, commonly known as the "Luxemburg Commission." Six Economic Sections operated under this commission.

d. Inter-Allied Railway Commission, with three subcommissions.

e. Inter-Allied Waterways Commissions, with one subordinate branch and two control centers.

f. Road Commission.

g. Coal Distribution Commission.

h. Commission for Government of the Rhineland, composed of Civil Administrators and Officers in Charge of Civil Affairs.

i. Receiving Commission, to inspect and receive material handed over by Germany under the terms of the Armistice.

j. Calais Railway Commission.

k. Calais Waterways Commission.

l. Commission of Postal Control.

m. Shipping Commission.

n. Rotterdam Food Commission.

o. Compeigne Finance Commission.

p. Inter-Allied Military Food Commission, created to distribute rations for the Rhineland supplementary to the amounts granted Germany as a whole by the Hoover Commission. (See par. 62 below.)

61. American Representation on These Commissions.—*a.* Each commission included American representa-

tives. These at first failed to maintain adequate liaison with the American General Headquarters, so General Pershing, on January 18, 1919, directed that thereafter the senior American member of each Inter-Allied commission or subcommission which dealt with economic, industrial, or financial questions, or any matter affecting the government of the occupied territories, should take notes of the proceedings of each meeting, two copies of these notes to be sent to American General Headquarters and one copy to the Officer in Charge of Civil Affairs in occupied Germany. The latter was directed to establish a bureau to coordinate the actions of all commmissions and subcommissions and to see that the action of the American representative in every case was in accordance with the views of the commander-in-chief. When a conference was to be held that involved policies or matters tending to commit American headquarters to a particular course of action, and a final decision had to be reached in the conference, the American representative was directed to ascertain beforehand the opinion of the commander-in-chief on the matter, or, if such could not be obtained, to make it clear at the conference that he must refer the matter to American General Headquarters before taking final action. All the American members of commissions or subcommissions were further directed to keep in touch with the Officers in Charge of Civil Affairs in the territory occupied by the American forces and to act in harmony with the general policies that had been adopted.

b. The importance of the necessity for the instructions above mentioned will be apparent from a single incident. Prior to their issuance, the American representative on the Waterways Commission consented, in the name of his government, to the police of the Rhine throughout the zone of American occupation by a joint British and French river-patrol. As soon as the matter was brought to the attention of our military authorities, steps were taken to withdraw such consent. Much confusion and possible friction were thereby avoided. A river-patrol under American officers and marines was established which accomplished the work

to the entire satisfaction of the Allied High Command and retained, as was proper, the control of the American zone in the hands of our own forces.

62. THE HOOVER COMMISSION.—*a*. After the armistice, when it became necessary for humanitarian reasons to ration Germany, that task was assigned to the Hoover Commission, the only agency then in existence which was really competent to carry it out. This was a commission originally appointed and presided over by Mr. Herbert Hoover. Its work during the war had been the study, development, distribution, and control of the food supply of the world. It was a purely civil organization and was in no sense connected with the military. In theory it had nothing whatever to do with any of Marshal Foch's commissions for occupied German territory. In practice, however, since it supplied food to both occupied and unoccupied Germany, it came in close contact with the allied armies of the Rhineland. The Inter-Allied Food Commission came to use the bases of the Hoover Commission at Rotterdam and Antwerp as a source from which to draw food.

b. The source of supply was originally intended to be solely the Hoover stocks held by the Permanent Supply Commission at Rotterdam and Antwerp, but for several months nothing was received from this source and the British army was finally obliged to sell a portion of its reserve stocks to save a portion of the population from starvation. The French soon did likewise, and the United States then followed these examples. All such sales were from stores belonging to reserve supplies of the armies, and were independent of the Hoover supplies.

63. THE AMERICAN PROBLEM.—Though the armistice provisions assured the retention at their posts of the German civil officials, other factors, such as the critical food and industrial situations and the suddenness with which our high command was confronted with the task, gave rise to difficulties. From the date of the armistice until our armies reached German soil, General Headquarters was faced with the problem of moving 300,000 men to the Rhine.

There was uncertainty as to the nature of the occupation. The belief was prevalent that the civil government would require but slight interference. There was a dearth of men available who had the necessary qualifications for administering a civil government or who had an adequate conception of the German governmental system. All these factors inevitably contributed toward imperfect preparation for the task in hand.

64. ENTRY INTO LUXEMBURG.—The Third Army began its advance from the old front-line positions at 5:30 AM, November 17, 1918, and Luxemburg was entered three days later. General Pershing issued a proclamation to the people of Luxemburg, though, strictly speaking, no military government was exercised in this territory. There was no intention of treating Luxemburg as a belligerent, she being an unarmed neutral who had protested sharply against Germany's invasion during the first days of the war. The stay in Luxemburg was very brief, though some American troops continued there until the summer of 1919. The proclamation issued to the inhabitants was as follows:

"PROCLAMATION TO THE PEOPLE OF LUXEMBURG.

"After four years of invasion Luxemburg is now happily liberated. Your freedom from German occupation was exacted of the invaders by the American and Allied armies as a condition of the present armistice. It now becomes necessary for the American troops to pass through Luxemburg and to establish and maintain for a time their communications upon your territory.

"The American troops have come to Luxemburg as friends and will conduct themselves here strictly in accordance with international law. No hardship need be expected from their presence, which will not extend beyond what is deemed strictly necessary. Your government and institutions will nowhere be interfered with. You will be undisturbed in the peaceful pursuit of your lives and occupations. Your persons and your property will be fully respected. It will be necessary for the American Army to utilize certain buildings, railroads, telegraph and telephone lines, and possibly other public works, for shelter, transportation, or communication; but beyond that, whatever supplies may be required will be paid for at a just valuation.

"It is assured that you will commit no aggression upon the American Army and will not give any information, aid, or comfort to the enemies. You are expected cheerfully to observe such rules as the American military commanders may find it necessary to make for the safety of their troops and your own protection."

65. General Pershing's Proclamation to the Germans.—General Pershing's proclamation to the inhabitants of occupied Germany was as follows:

"Proclamation to the Inhabitants.

"The Army of the United States, in conjunction with the Allied military authorities, has taken possession of and garrisoned with troops the district of Treves (Rhenish Prussia), the entire localities of Daun, Ahrweiler, Coblence (city), Coblence (suburbs), Cochem, Mayen, Neuweid, St. Goard, Summern, and Zell, and the entire district of Alter Kirchen, with the exception of those parts lying further to the east than thirty kilometers from the eastern end of the bridge over the Rhine at Coblence; in the district of Wiesbaden (Province of Hesse-Nassau), the entire localities of St. Goarshausen, Unterlahn, Unterwesterwald, with the exception of those parts that are more than thirty kilometers distant from the eastern end of the bridge over the Rhine at Coblence.

"The above mentioned areas and their inhabitants are under the regulations and authority of the American army. These orders are succinct, and strict observance is expected of all. Those who observe these regulations have nothing to fear. The American army is not bringing war against the civil population. All that lawfully and peacefully abide by the regulations laid down by the military authorities may count on protection for their persons, homes, property. and belief. The others will be arrested at once and brought strictly to account.

"The American army on their part will adhere strictly to the laws of nations as well as the laws of civilized warfare. The population, on their part, must offer no signs of enmity towards the American troops nor place obstruction in their path, either by word or deed.

"It is the duty of the population to regain their normal mode of life and to reestablish the schools, churches, hospitals, and charitable institutions, and to continue in their regular local activities. Therein they will not be disturbed, but rather assisted and protected. Insofar as their scope and bearing permit, the courts, city departments, and civil establishments will be continued under the supervision of the American army. The existing laws and regulations, insofar as they do not interfere with the duty and security of the American troops, shall remain in force.

"All violations of the regulations, inimical conduct or overt hostility against the order of the military authorities will be severely punished."

This proclamation breathes throughout a spirit of humanity and justice, in marked contrast to the proclamations previously issued by the German army in France and Belgium.

66. Memorandum No. 4, Third Army.—*a*. This memorandum was published on November 28, 1918, and is no-

table as the first act of specific regulations issued by the American army for observance by the German civil population. The opening sentence strikes the keynote of the whole American occupation:

> "In stopping in a town where a halt for the night or a longer period has been ordered, the commanding officer will *send for* the Burgomaster, chief of police, and other prominent officials."

This sentence informed all officers that the civil population was to be impressed at the start with the power and authority in the hands of the occupying army, and that respect and courtesy must be accorded its representatives on every occasion. Civil officials were to be made to realize at once that they were subordinate to the American commander of their city or town, and were to obey promptly and cheerfully the slightest order given. The sentence implies further that American officers when dealing with civil officials in territory under their control should order and never request.

b. The following paragraphs of the same memorandum were to serve as an outline of the proper directions which town commanders should give the civil officials:

> "He will hand them copies of the proclamation of Marshal Foch and the Commander in Chief. He will inform them that military government has been established in the town and surrounding district; that the principal object of this government is to provide for the security and efficiency of the United States Army; that so long as the inhabitants conduct themselves peacefully and quietly, the ordinary civil and criminal laws will be continued in force, and will be administered by the local officials, and the private property and personal rights will be respected. Should an official decline to serve, the commanding officer will direct the Burgomaster to name his successor. Should the Burgomaster be absent, the commanding officer will direct the official next in rank or a suitable civilian to act as such.
>
> "The commanding officer will obtain from the Burgomaster a map of the town showing the location of all banks, hospitals, railroad stations, libraries, and public buildings. He will inquire if added police protection is needed. If in his judgment such added protection is needed, extra guards will be posted.
>
> "The commanding officer will direct the Burgomaster to inform his people to avoid assembling in crowds and to go quietly about their ordinary affairs of life.
>
> "He will direct the Burgomaster to forbid the sale or carrying of deadly weapons."

These restrictions were believed necessary in order to prevent friction between the civil population and the troops.

67. Allied Influence Upon Our System.—*a*. Our military government of occupied Germany was not precisely what it would have been had we been without associated powers. It was important that the different allies and associated powers should coordinate their systems and maintain, in a broad way at least, the same general kind of rule. Marshal Foch's instructions were not binding upon General Pershing but were rather in the form of suggestions. They were nevertheless complied with in all important respects.

b. That the regulations laid down by Marshal Foch were not always followed exactly by the different army commanders must be admitted. This was perhaps unavoidable, since the customs of the various nations taking part in the occupation differed so widely that complete uniformity could hardly be expected. No attempt was made to enforce regulations that ran counter to the national policy of the country of the army concerned.

68. Control by General Headquarters.—*a*. An unusual feature of our exercise of military government in Germany was that for the first time in our history the commanding general of the occupying army was not permitted to administer the military government. This may have been because of the international importance of our close association with the Allied powers in the administration of the occupied territory, or it may have been because of the suddenness with which our armies were confronted with the situation, or it may have been because of a desire to leave the occupying army unhampered and free to resume active operations should the Germans prove refractory and refuse to abide by the armistice terms agreed to by their representatives. At any rate, General Pershing decided from the beginning to retain a large amount of the power of civil government of the occupied territory in his own hands and in those of his staff at Chaumont.

b. This placed upon the American High Command the heavy burden of drafting the regulations necessary for the security of the occupying army, and of making provision for the army military tribunals which would be required to enforce our regulations. The unexpected suddenness of the close of the war left little time for the study of problems which would confront the military government, or for the formulation of policies or the completion of an organization to carry on the civil administration. It became necessary to adopt temporary expedients to tide over the situation until a permanent organization could be devised.

69. AMERICAN ORGANIZATION.—*a.* Brigadier General H. A. Smith was detailed as "Officer in Charge of Civil Affairs in Occupied Territory." At first he was designated as "Deputy Chief of Staff for Civil Affairs at G.H.Q.," but this title was changed a few days later to that first stated above. Colonel I. L. Hunt was detailed as his representative with the Third Army as adviser of its commander in civil matters. General Smith was clothed with representative authority in relation to the sovereign powers being exercised in the American zone. In his legislative capacity he drew up the ordinances which were to govern the civil population: in his executive capacity he had the primary duty of supervising their execution; in his judicial capacity he set up a system of courts and either exercised or delegated the power of ultimate approval or disapproval of their findings.

b. Orders No. 1, Advance General Headquarters, was published at Treves, December 13, 1918, and became, together with General Pershing's *Anordnungen* (ordinances), the fundamental charter of the military government. The former prescribed the organization of the military government; the latter prescribed the regulations which were to govern the relation between the civil population and the occupying army.

c. Two fundamental principles were announced in Orders No. 1 which profoundly affected the conduct of our military government. They were:

(1) *Establishment of an authority in occupied territory, directly representing the American Commander-in-Chief, with full power to*

promulgate the orders of the military government and to supervise their execution.

(2) *Use of tactical formations of the Third Army as units of control.*

d. The plan of placing the powers mentioned in *a* above in the hands of the army commander was considered but discarded. This decision in a very real sense limited what would normally have been the authority of the commander of the Third Army, in that he was not permitted to act as military governor of the area occupied by his troops.

e. The system of using tactical formations as units of control was continued until June of the following year. (See paragraph 84 below.)

f. The subdivisions of the civil affairs organization at Advance General Headquarters were as follows:

Public works and utilities.
Fiscal affairs.
Sanitation and public health.
Schools and charitable institutions.
Legal department.

Some of the departments never came to function in more than a nominal sense.

g. The actual administration of the city of Treves was placed directly under Advance General Headquarters.

70. THIRD ARMY AS AN AGENCY OF CIVIL CONTROL.—From December 9, 1918, until the dissolution of General Headquarters on June 1, 1919, the Third Army was merely an agency by means of which civil control was exercised. The plan at first considered was that of having Advance General Headquarters *directly* supervise subordinate commanders of the Third Army in their conduct of civil affairs, but this was discarded in favor of requiring such supervisory powers as General Headquarters cared to assert to be exercised through the medium of the commander of the Third Army. It should be borne in mind that the officers charged with the execution of orders issued from the Office of Civil Affairs at Advance General Headquarters were the unit commanders of the Third Army, who, in all matters, were directly responsible to the commander of that army.

The opportunity to have the same authority both issue and execute the ordinances was lost when it was decided to utilize the tactical formations of the occupying army as units of civil control.

71. OFFICE OF CIVIL AFFAIRS, THIRD ARMY.—*a.* There were at the outset four fields of activity to which it was necessary for the Office of Civil Affairs, Third Army, to devote its energies. They were as follows:

(1) In an advisory capacity to the Commanding General, Third Army, as to his powers in relation to military government. These were at first, but incorrectly, presumed to be of small importance because of the fact that the initiation of measures had been largely reserved to higher authority.

(2) In a capacity similar to that of the Officer in Charge of Civil Affairs of a division, in regard to territory occupied by the Third Army Troops. With the appointment of a garrison commander for the area, the control of civil affairs therein was removed from the direct jurisdiction of the Army and from its Office of Civil Affairs.

(3) In the advisory capacity to the Officer in Charge of Civil Affairs in Occupied Territory, by presenting to him the practical problems confronting the Army and suggesting solutions.

(4) As a pure and simple office of transmission between smaller tactical units and the Officer in Charge of Civil Affairs in Occupied Territory.

b. New responsibilities defined themselves, however, almost as soon as Third Army Headquarters was fairly established at Coblence. Actual supervision over the execution of American orders was performed in the first instance by the commanders of towns and villages. These were in no sense separate members of any hierarchy of military government. Their duties as unit commanders were primary, their civil duties incidental. Their channels of responsibilities converged in the commander of the Third Army in all but civil affairs, and even these, it was soon found, could properly be supervised only through that commander, who naturally utilized his Officer in Charge of Civil Affairs in supervising the control of civil affairs by his own subordinates.

c. It is to be noted, however, that in apportioning the supervisory powers of the military government, the Officer in Charge of Civil Affairs, Third Army, was not permitted

to exercise control over civilian circulation. This was turned over to the second section of the general staff, as also was censorship of the post, telegraph, and telephone. Other matters were assigned to G-1 and G-4. The result of this was that, while the Office of Civil Affairs at Advance General Headquarters had legislative powers on all subjects pertaining to the military government, the scope of the supervisory powers of the Office of Civil Affairs, Third Army, was not co-terminous therewith.

d. The distance and lack of contact between Advance General Headquarters and town and village commanders tended to place additional responsibilities upon the commander of the Third Army. Orders are seldom free from misinterpretation, and in view of the general lack of understanding at first displayed by the majority of officers with reference to military government, it was not unnatural that inquiries and requests for explanations should constantly reach Third Army Headquarters. Assumption by the Army of the responsibility of interpreting the orders of Advance General Headquarters was the logical consequence of this situation. The interpretations appeared as Letters of Instructions, Third Army, and, although prepared by the Office of Civil Affairs, were issued over the signature of the chief of staff. They embraced a wide variety of subjects, such as rates of exchange, public health, provost court procedure, and traffic regulations. Though principally confined to the interpretation of regulations promulgated by Advance General Headquarters, the army commander, by virtue of the authority vested in him to provide for the security of his troops, occasionally made use of them to promulgate new regulations.

e. The power to approve, disapprove, or mitigate sentences imposed by provost courts was exercised in the first instance by the officers appointing the courts—division commanders in the case of all superior provost courts, and town commanders in the case of inferior provost courts. It was at first contemplated that ultimate approval or disapproval of findings would be expressed at Advance General

Headquarters, but, because of the time which would elapse before cases were finally settled, this power of ultimate review was finally delegated to the Third Army. The records of military commissions were handled in a different manner, and did not come under this ruling.

72. Policy of American Military Authorities in Economic Matters.—The tendency of the early decisions of the Inter-Allied Economic Commission was to throttle German trade. The American military authorities foresaw that this would result in the complete closing of all factories, thereby throwing large numbers of workmen out of employment. Unemployment breeds social unrest, and this is a condition which a military government must strive to avoid. The American military authorities, therefore, decided that final determination in all matters affecting industrial life and commercial activity in the American zone should be reserved to themselves and not be left entirely to the instructions of a commission which was not in so favorable a position as they to judge as to local economic conditions. Under this decision the number of unemployed in the American zone shrank from thousands to a negligible figure within six months.

73. Suppression of Labor Difficulties.—*a*. Soon after the Allied armies had settled in the Rhineland, an effort was made by France to reduce her army and assist her factories to resume normal production. One of the chief difficulties she encountered was that of transportation. The French railroads had greatly deteriorated during the war and a large part of the rolling-stock available was still retained by the army in order to maintain its supply. The American army was therefore approached by France and requested to divert as much of its traffic as possible from French railways. The Rhine presented a solution of the difficulty and also other obvious advantages. Its use would not only relieve the railways of France but would also reduce the cost of transportation for the American army. It was therefore decided to ship supplies from the United States to Antwerp or Rotterdam, according to the port

facilities available, and then transfer them from ships to river barges and tow them up the Rhine to suitable ports within the American zone. The ports of Bendorf, Andernach, and Coblence-Lutzel were chosen for this purpose. Ration depots were established at Andernach and Bendorf and a quartermaster depot at Coblence-Lutzel. The first supplies for the American army came up the river on March 23, 1919, and other supplies continued to arrive thereafter at an average rate of 1216 tons per week at Andernach, and 1912 tons per week at Bendorf. One shipment of 977 tons of quartermaster stores was sent to Coblence-Lutzel. Each port commander was required to render a daily report of the goods unloaded.

b. Early in April, 1919, a large strike occurred at Andernach, possibly encouraged by the authorities of that town in the hope of getting the contract for unloading barges transferred from the governmental organization to a local contractor. The only result of the strike was that the strikers were tried before American provost courts and each was sentenced to 90 days' hard labor for conspiring to interfere with the supply of the army. There was a limited sympathetic strike at Bendorf which resulted in the loss of only a half-day's work, no arrests being made.

74. CONTINUANCE IN OFFICE OF CIVIL OFFICIALS.—The terms of the armistice required civil officials to remain in office, but there was no intention on the part of the American authorities to compel any civil official to serve against his will. No case of such an official declining to continue his duties, however, was ever brought to the attention of the Third Army Headquarters. In many cases our arrival was welcomed by the officials, who regarded our coming as being of great assistance to them in enforcing their authority which had been weakened by the Soldiers' and Workmen's Councils which had been created in many cities during the preceding month of November. These organizations, largely made up of home-coming soldiers, had usurped much of the power of the former civil officials. Our arrival restored the duly constituted authority.

75. BILLETING.—This occasioned practically no trouble. The German people were accustomed to having their own troops quartered on them, so they accepted billeting as a matter of course.

76. REQUISITIONS.—*a*. These at were first limited to forage alone. The farmers, afraid that we would proceed in a manner similar to that which they had experienced from their own troops, hurriedly concealed their few remaining supplies in order to avoid starvation. Demands by the army for forage were met on every hand by deceit and subterfuge, and it required prolonged effort to make available the quantities necessary for animals. It soon became apparent, however, that supplies were actually very short, and that our chief dependence would have to be on our forage depots in France.

b. Fuel was plentiful and no difficulty was expereienced in obtaining it. The declaration in Memorandum No. 4, Third Army, that food would under no circumstances be requisitioned is a striking commentary on the humane policy that actuated our army. So many stories of starvation and misery within German territory had come to the notice of the army commander that he believed it wise to abstain from requisitioning foodstuffs until the true food situation could be ascertained by investigations conducted on the spot. The American system was that requisitions were served upon the chief officials of the municipality, the American government thus becoming indebted to the municipality direct and the municipality being left to settle with its own inhabitants, thus saving a great deal of petty bookkeeping.

77. LIQUOR TRAFFIC.—The population resented the provisions in Memorandum No. 4 forbidding the sale of alcoholic drinks and restricting the hours during which light wines and beer might be sold. Secret traffic in cognac and *schnaps* could never be wholly prevented. Strict measures were taken to punish all offenders, the prescribed punishments including not only fine and imprisonment by provost courts, but confiscation of liquor and closing of places

of business of offenders on orders of the commanding officer.

78. PUNISHMENTS AND RESTRICTIONS PRESCRIBED BY MARSHAL FOCH.—*a*. Punishments and restrictions prescribed by the Allied High Command included trials by court-martial, deportation, and the provisional or final closing of refractory commercial or industrial establishments. Convicted Germans were allowed the right of appeal to the various army commanders, and finally to the Allied Commander-in-Chief.

b. Detailed instructions were issued regarding declarations of residence, which were required of all German citizens, and the form of identity cards which would be carried. German municipal authorities were required to keep a list of the domiciles of all persons within their respective jurisdictions. Regulations governing travel were issued. Assemblages, except upon authorization of the military authorities, were prohibited. A censorship of the press, post, and telephone was established. The circulation of false information or of stories which might tend to spread disorder was prohibited. The taking of photographs without a special permit was forbidden. Numerous rules were also published relating to pigeons, arms, ammunition, methods of requisition, restaurants and cafes, etc. All these matters were set forth with great attention to details.

79. PUBLIC UTILITIES.—It was provided that public utilities should be maintained under strict control of the allied military authorities. Every effort was to be made to start and encourage the normal peace-time activities of communities. Churches, schools, courts, and eleemosynary institutions were to be fostered, as were administrative councils. Rules regulating such matters as rates of exchange, financial institutions, collection of taxes, payment of salaries, and the issue of stamps, bonds, and money, were not discussed in these preliminary instructions.

80. COMPLICATIONS DURING SECOND PERIOD.—*a*. The failure of the United States to ratify the Treaty of Ver-

sailles introduced certain complications into the situation as soon as that treaty went into effect. One was that the American Forces in Germany continued under the Old Armistice Agreement, whereas Belgium, France, and Great Britain automatically abandoned that agreement by ratification of the treaty. Another complication was that the American Government, not having ratified the treaty, could not be officially represented on the Inter-Allied Rhineland High Commission. The Commission government nevertheless designated General Allen, the commander of the American Forces in Germany, as an "unofficial observer," and he sat with the Commission from the beginning, but unofficially and without vote. He was accorded the right to discuss all questions and to express his own views and his Government's instructions, if he so desired. His opinions were not only welcomed but respected, and either he or his deputy was present at each meeting. America continued to share uniformly in representation on all committees and other agencies of the Commission.

b. Notwithstanding this cooperation, General Allen asserted his rights under the Armistice Agreement and held himself free to accept or negative, so far as his zone was concerned, any action of the Commission. In case of approval he ratified the action by publishing it in a general order which legally bound every resident within his zone. This policy lasted almost two years, or until the ratification of America's separate peace with Germany. During this time the American commander practically controlled his zone under the laws of war, issuing his own orders as occasion required and punishing violations of the same in his own provost courts, the theory being that until peace had been declared officially between America and Germany those countries were still at war.

c. During this period there was much speculation, not only among the inhabitants and German officials, but also among the personnel of the Commission and the American Forces, as to what was really the dominant authority in the American zone. The American assertion of rights in-

dependent of the Commission and of the Rhineland Agreement certainly deprived the Commission in some degree of the privileges and dignity which it otherwise would have enjoyed.

Section V

Comparison of American, French, and British Systems

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81. General Considerations.—*a.* This comparison is made with reference to occupied Germany where these countries administered military governments side by side. All allied commands in the occupied territory were directed to exercise their authority through the regularly elected or appointed German civil officials. Under the general rules of international law, hostile or inefficient officials were not required to be retained in office, and all the armies fully exercised the right of removal for cause. Few officials were removed, however, for the reason that they were a carefully selected and trained body of administrators with reasonable prospects of life tenure in their positions. Their performance was, therefore, generally more efficient and their supervision was far simpler than government by Allied officers or new civilian appointees would have been. The tendency was rather to try by military courts such officials as failed to discharge their duties satisfactorily and to retain them in office if practicable.

b. We largely adopted the French general staff system for our armies abroad, but we did not follow the French in applying the general staff system of control to our military government. We naturally more nearly approached the British system, being familiar, as were the British, with

the principles of criminal law originating in the common law, which differ greatly from those principles derived from the Roman civil law which formed the basis of the jurisprudence in France. We do not seem to have appreciated as fully as did either the British or the French the vital necessity of organizing a special *staff system*, separate from the purely military staff, to deal with the problems of military government.

c. The British, perhaps because of their more extensive experience in colonial administration, assigned a far greater number of trained staff officers to duty with the military government than did either the French or ourselves. Whether or not it was proper to employ so large a military government personnel in this particular case is at least questionable.

82. THE FRENCH SYSTEM.—*a.* The French had a special general staff section (*Bureau des Affaires Civiles*) to handle their military government. This left their usual general staff sections free to give their whole attention to keeping the military forces prepared to renew hostilities in case of necessity.

b. The chief of the *Bureau des Affaires Civiles*, being a member of the general staff, met in daily conference with the chiefs of the other sections of the general staff, thus insuring harmonious action and a common policy. The civil affairs section being a separate section of the general staff, the army could move forward to a renewal of hostilities without being hampered by the military government, and likewise the military government could continue to operate efficiently after the army had moved on. Orders concerning purely civil matters within the occupied territory were issued by the civil administrators; those relating to purely military matters were issued by the division or other tactical commanders. In the event of conflict between the two, the matter was referred to the army commander.

c. The French system differed from the British in having all officers who were connected with the civil administration serve on the staff of the supreme military

commander in the occupied area. Subordinate commanders were entirely free from responsibilities pertaining to the civil administration.

d. The following are regarded as the strong features of the French system:

(1) The army commander was the head of both the military and the civil administrations.
(2) The organization of a special general staff section to deal with civil matters, and the control of civil affairs through the bureau thus created.
(3) The organization of the civil administration along territorial lines.

The principal merit was that the territorial and separate organization of the system permitted the free reassignment or employment of the troops without disturbing either military operations or the civil administration.

e. Its weak features are regarded as being the failure to assign similar civil administrative staff sections to staffs of corps and division commanders and to make those commanders responsible for the civil administration within their respective areas, and the fact that the personnel for the civil administration was inadequate.

83. THE BRITISH SYSTEM.—*a.* The British put an organization into effect from the beginning which more nearly embraced all the sound fundamental principles of military government than did any of the systems organized by the other armies. This, as already suggested, was perhaps because of their more extended colonial experience. However, as we shall see, not even the British system was devoid of weaknesses.

b. One of the important principlies applied was that the army commander was the supreme authority within the occupied area. British General Headquarters did not attempt to interfere in the administration of the military government, concerning itself solely with the larger questions of policy emanating from the headquarters of Marshal Foch.

c. Another important principle applied by the British was the creation of a *special staff department for the con-*

duct of civil affairs. This department was separate and distinct from the usual military staff. The army commander really had two staffs, one for performing the usual military staff duties and the other for performing duties pertaining to the military government. The latter staff was headed by a Chief of Staff for Civil Affairs who was styled the "Military Governor." As in the case of the French system, the responsibility for both the army and the military government rested with the army commander. The system was not a dual one to the same extent as the French, however, for reasons presently to be stated.

d. A third principle was that the area commandants controlled absolutely the civil administration in their respective areas. Responsibility for both the purely military affairs in the area and the military government of the civil population in the same area was vested in the person of the commanding officer of the troops in that area. The same principle extended to smaller subdivisions, the only differences being those arising from the smaller tactical units involved and the more restricted responsibilities with regard to the military government. In this the British practice differed widely from that of the French. The British seems preferable.

e. The principle of providing subordinate commanders with trained staffs for the administration of civil affairs was carried out, thus freeing the normal military staffs of those commanders from the burden of civil administration. This principle was carried down to the lowest units, until the town commander became the superior of the local burgomaster.

f. Another principle involved in the British organization was that military commands were made co-extensive with the political subdivisions of the occupied territory.

g. The following are regarded as the strong features of the British system:

(1) Centralization of authority in one commander.
(2) Special staff section to handle civil administration.
(3) Assignment of similar staff sections to staffs of subordinate commanders.

(4) Control through a territorial organization conforming to the political subdivisions of the occupied area.
(5) Assignment of adequate personnel to perform the duties connected with the military government.

h. The great dignity with which the British military governor surrounded his administration made a very favorable impression upon the inhabitants. The philosophy of the magnanimity of the victor was demonstrated by the fairness and liberality, yet firmness, with which the German people were treated.

i. The British system did not have many weak features. A mistake appears to have been made in designating the chief civil administrator, instead of the army commander, as "Military Governor." This caused some confusion, in that the Germans, and even many of the British themselves, could never quite understand why the person who was called the military governor was not the supreme authority in occupied territory.

j. The major weakness of the British system seems to have been that the principle of making military commands co-extensive with the political subdivisions of the occupied territory was carried out to the extent of subordinating tactical considerations to the necessities of civil administration. This was a serious defect, for military government is a means, not an end, and tactical requirements should remain supreme throughout. The better way would seem to be to distribute the command according to correct tactical principles, and then assign permanent civil administrators or commandants where necessary, according to the political organization of the occupied territory, these civil administrators automatically to become staff officers of the commander whose unit occupies the area.

84. APPLICATION OF CERTAIN PRINCIPLES COMPARED.—

a. Undivided and centralized control.

American: Military and civil authority not both exercised by the commanding general of the Third Army until after General Headquarters was abolished.

British: Undivided control and army commander supreme, but confusion caused by designation of a subordinate as "Military Governor."

French: Undivided control and army commander supreme.

b. Separate staff section for civil administration.

American: The duties were assigned to an "Officer in Charge of Civil Affairs" but his powers and his relation to the general staff were never defined. This officer was at first designated by General Headquarters as "Deputy Chief of Staff for Civil Affairs," but this designation was later revoked.

British: Separate staff department for civil affairs (C), coordinate with general staff (G), supply (Q), and administration (A).

French: Separate general staff section for civil affairs.

c. Civil administrators of lower political subdivisions serving on staffs of corresponding military commanders.

American: Detailed on corps and division staffs, and on brigade staffs where required.

British: Same.

French: Civil administrators wholly independent of tactical commanders of units subordinate to the army.

d. Civil administrators selected for special qualifications; adequacy of personnel for work required.

American: In principle selected for special qualifications; in practice this was not always possible. Personnel at times inadequate.

British: Specially selected; probably more than adequate.

French: Specially selected; inadequate.

e. Civil administration corresponding to political subdivisions of the occupied territory.

American: Unnecessarily confused with tactical requirements at first; later made to correspond with territorial requirements.

British: Tactical requirements erroneously subordinated to necessity of territorial organization for civil administration.

French: Tactical requirements wholly unhampered by territorial organization for civil administration.

SECTION VI

Recapitulation of Important Points and Principles

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85. AUTHORITY AND GENERAL POLICY.—*a.* The authority for administering a military government is established by the fact of occupation. This does not mean that the country must be actually conquered.

b. Having overthrown the existing government and deprived the people of the protection that the government afforded, it becomes the duty of the invader to give them a government adequate to the protection of their personal and property rights.

c. It is decidedly to the military advantage of the invader to establish a strong and just government such as will preserve order and the public safety and, at the same time, pacify the inhabitants as far as possible.

d. In principle, the occupied territory should be administered as far as practicable without oppression of the inhabitants, and as if the district were a part of the invader's own country.

e. While a liberal policy should be pursued towards the inhabitants and they should be allowed great latitude in their public and private affairs, these considerations are necessarily subordinate to the needs and efficiency of the military service.

f. The military government should be so administered that upon conclusion of the occupation the inhabitants may be able to return to or set in motion, without undue strain, the machinery of their own laws and institutions.

g. The permanence of peace will depend in a large degree upon the magnanimity of the victor.

h. History will judge an occupying army and the country it represents by the character and measure of its success in administering the occupied territory.

86. CONTROL.—*a.* The army commander should be the supreme authority in the occupied area.

b. A proclamation, though not necessary from a legal standpoint to establish a military government, is essential from a practical standpoint for the purpose of apprising all concerned of the fact of the military government and the course of conduct that is expected. The practice in this country is to make known by proclamation the fact of military occupation and the extent of territory affected by it. (See par. 292, *Rules of Land Warfare.*)

c. Supplemental regulations covering restrictions and detailed instructions to the inhabitants should always be prepared and ready for issue contemporaneously with the proclamation or very soon thereafter.

d. It is best to make few promises or agreements concerning the future. The military government will thus be left unhampered in dealing with conditions as they arise during the occupation.

e. Civil control should be exercised through a territorial organization conforming to the political subdivisions of the occupied territory.

f. The greatest efficiency of government will be acquired by centralization of policy and decentralization of execution.

g. The respect of the people for the authority of the army must be gained. Issuing an order today and revoking it tomorrow causes loss of respect.

87. TREATMENT OF INHABITANTS.—*a.* No opportunity should be neglected to make it appear that the wishes of the

inhabitants are being considered and granted to the fullest extent possible under the circumstances.

b. It often impresses the inhabitants most favorably to surround the military government with considerable dignity.

c. The treatment of the inhabitants of the occupied territory should be characterized by consideration shown for their domestic affairs, especially their family relations and the exercise of their religion.

d. The people may not be compelled to take part in military operations against their own country, but they may, if deemed expedient, be allowed to do so of their own free will.

e. Autonomy should not be granted to municipalities too soon. Pressure in this direction will almost invariably be exerted in cases where the occupied territory is to be annexed or given its independence, and should be resisted.

88. LEGISLATION.—*a.* In legislating for conquered *foreign* territory, a military governor may, in his discretion, disregard the prior laws of that country, but in legislating for conquered *home* territory, he may not be wholly above the laws of his own land. (See Chap. III, Sec. I, par. 2 *c.*)

b. The extent to which the invader should leave the local laws and ordinances in force will, in general, depend mainly upon the previous political relations of the inhabitants and their officials, and upon the ability of the latter to preserve order and maintain justice under those laws.

c. Ill considered or wholesale changes in local laws should not be made. If annexation of the occupied territory is contemplated, the necessary changes should, in general, be in the direction of the laws and governmental system of the invader's own country; if the territory is to be given its independence, the changes should, in general, lie in the direction of the laws and governmental system which the people will want as their own; if the territory is to be returned to its former possessor, few changes should be made.

89. LOCAL OFFICIALS.—*a.* Natives should be appointed to or retained in civil official positions to the fullest extent

possible under the circumstances, but must be made to realize fully and from the first their responsibility to the commandants of areas within which their jurisdiction lies, and that they derive their power not from their own former laws but from the conquering state.

b. It is a mistake to be hasty about removing trained civil officials except for very serious offenses, especially where they would have to be replaced by others of little or no experience. Fines should be imposed instead. This is especially applicable to cases where the occupied territory is to be returned to its former possessor.

c. In making appointments of officials or changes in local laws, it is a mistake to yield too much to pressure from inhabitants who are citizens of the United States, or from other foreign elements of the population. These invariably will seek special employment, favors, or concessions under the military government, and will as invariably be looked upon with suspicion and even hatred by the native population.

90. PUBLIC SERVICES AND UTILITIES.—*a.* Public services and utilities should continue in operation, or, if interrupted, should be put into operation without delay.

b. Schools, churches, hospitals, and charitable institutions should be reestablished. The importance of this lies mainly in the fact that they contribute to the happiness, contentment, and comfort of the people and assist them in returning to their normal modes of life, all of which will be reflected in their attitude towards the problems confronting the military government.

91. PAYMENT FOR PRIVATE PROPERTY.—Private property taken for the use of the occupying forces should be paid for in cash, if possible, at a fair valuation. When for any reason cash payment is not made on the spot, a receipt must be given in each case.

92. REQUISITIONS.—*a.* Requisitions should be resorted to only when necessary, should be only for necessaries, should not be for excessive amounts, and must be proportionate to

the resources of the country so as to produce as little distress among the people as possible.

b. Requisitions should be made only by certain designated commissioned officers, lists of these officers to be furnished local civil officials, and should be served only upon local agents designated for that purpose in the communities where the articles, etc., to be requisitioned are located.

93. CONTRIBUTIONS.—*a.* Contributions may not be levied by anyone inferior to the commander of the occupying army. The principal contributions are usually exacted at the peace table in the form of indemnities.

b. Direct contributions and taxes always weigh heavily upon the population and tend to cause resentment and dissatisfaction. A favorite and convenient indirect method of raising funds is to take over the customs houses and divert the required sums from the revenues on imports.

94. ADMINISTRATION OF JUSTICE.—*a.* The administration of justice is not only essential to the maintenance of control by the conqueror, but is also vital to the happiness and welfare of the population.

b. The inhabitants of the occupied territory do not owe *allegiance* to the military government, but they do owe absolute *obedience.*

c. A military government applies to all the inhabitants, native and foreign, of the occupied territory, just as in the case of any other government.

d. Offenses against the conquering power and acts injurious to the invader's cause or in violation of the laws of war should be tried by *military courts.* It is preferable to use provost courts and military commissions rather than courts-martial for the trial of offenses of this kind committed by civilians.

95. KEEPING MILITARY AND CIVIL ADMINISTRATIONS SEPARATE.—Military success being the paramount consideration, tactical requirements must, as nearly as possible, be wholly unhampered by the organization for civil administration. Duties should be territorially assigned with a view to the civil affairs section remaining in the area should the army move on to a continuation or renewal of hostilities.

SECTION VII

Establishment and Administration of Military Government

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96. IMPORTANCE OF ORGANIZATION.—It should be borne in mind that the efficient administration of a military government requires a smooth-running organization, especially a chosen and trained personnel. Thorough organization is as vital to the successful administration of the civil government as it is for the conduct of operations. An imperfect organization, once instituted, becomes difficult to change as the weight of custom more and more asserts its influence.

97. IMPORTANCE OF QUALIFICATIONS.—*a.* Our experience in Germany shows how important it is that the qualifications necessary for the conduct of a civil administration be developed among officers of the Army in time of peace. Notwithstanding that the history of the United States presents a series of wars which have demanded as their aftermath the exercise by military officers of civil governmental functions in Mexico, California, the Southern States, Cuba, Porto Rico, Panama, China, the Philippines, and elsewhere, yet the majority of our Regular Army officers in Germany found themselves ill equipped to perform tasks differing so widely from their accustomed duties. The present course in military government at the General Service Schools has been designed as a corrective measure.

b. It would always be well for the military commander who is charged with the establishment and administration

of military government to remember that he may, and probably will, have in his command a number of Reserve officers who have had governmental experience in civil life.

98. General Plans and Policies.—Military government over the occupied territory of an enemy is exercised in each theater of operations by the commander of the occupying forces in accordance with detailed plans prepared by him under the policies prescribed by General Headquarters purusant to such general plans or policies as may previously have been prepared, announced, or approved by the War Department. The first section of the general staff at General Headquarters is the coordinating agency for seeing that these policies are applied as uniformly as practicable throughout the various theaters of operations, should there be more than one. This does not mean that the *systems* of military government will be uniform throughout the several theaters, for each will depend upon the *type* of military government to be established in that particular theater; that is, whether it is over territory that is likely to be annexed, set free, or turned back to its original possessor.

99. The Plan of the Commander.—*a.* Whenever it becomes known or can be foreseen that the territory of the enemy is to be occupied, the commander of the military force that is to occupy it will no doubt be called upon to formulate beforehand his plans for administering the military government. These plans will always be controlled by the war plans and policies announced by higher authority as indicated in the preceding paragraph. They will also always depend upon the military situation, and will invariably be influenced by the political, economic, and psychological factors which may prevail in the area to be governed. To assist the commander in formulating these plans, the second section of his general staff will, therefore, be called upon to prepare as soon as possible, from hand-books or other data furnished by the War Department or other source, a digest of military, political, economic, and psychological information on the territory to be occupied. The actual preparation of the main plan or plans is primarily the function of the first section of

his general staff, assisted by as many of the officers who are later to take part in the administration of the military government as may be available at the time.

b. The plan of the commander for the administration of the military government should give expression to his decisions and instructions on the following points:

(1) The distribution and territorial assignment of his military forces in the occupied area.

(2) The immediate changes, if any, to be made in the local governmental system.

(3) The extent to which the more important local civil officials are to be displaced and army officers appointed to fill their places.

(4) The relationship which is to exist between the civil and military administrations, especially the extent to which tactical subdivisions are to be used as units of control of the civil administration.

c. Annexes to this plan will be prepared showing the proclamaton to be issued, the supplemental regulations to be published at the beginning, and the proposed staff organization for administering the civil government.

d. A preliminary plan will also be prepared, where appropriate, for the movement of the occupying forces into the area to be occupied.

100. THE PROCLAMATION.—The proclamation of the commander to the inhabitants of the occupied area should be prepared beforehand, should above all be brief, and should cover the following points:

a. Announcement as to the exact territory occupied, and of the complete severence, for the time being, of the political ties of the inhabitants of that territory with the former sovereign.

b. The extent to which the local laws and governmental system are to be continued in force, including a statement that the local criminal courts will not be competent to try offenses committed by or against members of the occupying forces.

c. Warning that strict obedience of the orders of the commander of the occupying forces is to be exacted of all, and that those who disobey such orders or regulations, or commit acts of hostility against the occupying forces, will

be severely punished; but that those who cheerfully accept the new sovereignty and abide by its orders will be protected and have nothing to fear.

d. A statement that the occupying forces come not to make war upon the inhabitants but to help them reestablish themselves in the ways of peace and to enable them to resume their ordinary occupations.

101. SUPPLEMENTAL REGULATIONS.—*a.* There should always be prepared and ready for issue contemporaneously with the proclamation, or as soon thereafter as practicable, a supplementary order giving definite expression to regulations and detailed instructions on a variety of subjects, such as requisitions, trial and punishments by provost courts and military commissions, restrictions to be placed initially on the inhabitants, etc., in order that the inhabitants of the occupied area may be fully informed from the first as to the line of conduct that is to be expected of them.

b. The principal restrictions usually included in this supplementary order relate to unlawful assembly, circulation, identification, possession of arms and ammunition, policy as to manufacture, sale, or gift of alcoholic beverages, and offenses in general against the personnel, establishments, installations and *matériel* of the army of occupation.

c. The drafting of these regulations, usually at a headquarters far removed from the theater to be occupied, is by no means an easy task. The right of the conqueror to make what ordinances he will is clear, but the view, not infrequently expressed and seriously argued, that since the victor is dealing with a defeated enemy he need not be much concerned about the treatment accorded the inhabitants of the occupied territory, should be vigorously repressed. The question involves more than what is due the inhabitants. It involves what is due the victorious country from the army which represents it. The occupying army in a defeated country is making history which is bound to be written. As that army conducts itself, so is the world largely to regard the country which it represents. If the occupying army is

dishonorable or unjust in its relations with the fallen foe and subjects the population to rules more harsh than are necessary for the preservation of order and the establishment of proper decorum and respect, that army and the country it represents are bound to stand in disrepute before the civilized world.

102. KNOWLEDGE OF CUSTOMS OF THE COUNTRY IMPORTANT.—It is important to have beforehand a thorough knowledge of the customs of the country to be occupied, for the enforcement of regulations which run counter to long-established customs is always extremely difficult. It is not likely that much difficulty will be encountered in the enforcement of purely military regulations, but where the customary daily life of the civilian population is circumscribed by many restrictions and inconveniences, the tendency is toward frequent or continual violations. Desirable as such restrictions may seem from an idealistic standpoint, they will not be conducive to success unless they are so framed as to harmonize to the fullest possible extent with the psychology of the population which they are expected to govern. In support of this, it is sufficient to point to the failure of the German administration in Belgium to attain even a small measure of success. The harshness of the rules there sought to be enforced, and the failure to appreciate the patriotism and habits of life of the Belgians, reacted in the end by transforming a race which had previously been far from a homogeneous one into a united and defiant nation.

103. CONFLICTS OF POLICY.—*a*. The safety of the occupying forces must be assured. Spies must be guarded against. Radical agitators who travel from one country to another, or from one section of the country to another, seeking fertile fields for spreading their propaganda, must be reckoned with. Circulation must therefore necessarily be restricted. Trade usually will be also more or less restricted. These restrictions are in conflict with the provision almost invariably contained in the initial proclamation inviting the people to return to the ways of peace and the pursuit of their ordinary occupations.

b. One of the great aims of the military governor should be so to administer the military government that upon conclusion of the occupation, the transition to the new state of affairs may be accomplished without radical change in the mode of life of the inhabitants or undue strain in the return to, or setting in motion of, the machinery of their own laws and institutions. Yet, restrictions must be placed upon assemblages, notwithstanding that the people, looking to the future, will want to gather together and discuss platforms of political parties or campaigns for supremacy in their national affairs. Parades and gatherings in celebration of national holidays, and even religious processions on church holidays, may have to be restricted.

c. The problem of reconciling these conflicts is one of the most difficult and delicate with which the military government will have to deal.

10. Relaxation of Restrictions.—*a.* It has been said that our *anordnungen* issued at the beginning of our experience in occupied Germany were too strict. It is true that, though they remained the basis of subsequent orders, necessity early brought about so many changes that the basis soon almost ceased to be recognizable. It will almost always be the case, however, that the restrictions imposed upon the inhabitants at the beginning will be more severe than the existing conditions actually require. It is better that this should be so, for subsequent relaxation will aways create a favorable impression whereas the subsequent imposition of more severe restrictions than were imposed at the beginning, however necessary they may be, will have the opposite effect.

b. An important point to be remembered is that the continuation of a rigid military government, with hard and fast restrictions, becomes in the end as burdensome to the occupying army as it is oppressive to the civil population. Severe measures may have been proper while hostilities were in progress or in the early days of the occupation, but there is seldom justification for retaining all of them once the

occupied territory has become peaceful and orderly. Celebration of the homecoming of prsioners of war, or assemblages that are otherwise of such character that they might be turned into hostile demonstrations against the occupying forces, should be prohibited; but church parades and perhaps even political gatherings may be permitted, provided the national colors are not displayed. It will usually be sufficient, if meetings are suspicious, to have American representatives present to report upon or check inflammatory speeches or disorder.

105. STAFF ORGANIZATION.—*a.* The army and each of the corps and divisions of the occupying forces should ordinarily organize separate staff sections for the administration of civil affairs. These sections will be needed, even though the form of the civil government of the occupied territory be not changed, and even though practically all the governmental agencies, including the local civil officials, be retained and remain in the performance of their duties. The fact that the civil administration is territorial, in the sense that it is fixed or attached to the area, whereas the purely military administration pertains to a tactical command and should therefore remain mobile, and the ever-present possibility of having to continue or resume hostilities, are the principal reasons why this staff section for the administration of civil affairs should be additional to and capable of separating readily from the normal military staff of the occupying forces. The civil affairs section for the army may be organized into appropriate subsections to take care of such activities, as public works and utilities, fiscal affairs, sanitation and public health, schools and charities, and legal matters connected with the administration of justice. The civil affairs sections for subordinate tactical units should be organized along the same lines as the army section, even though the functions of two or more of the subsections be performed by the same officer.

b. The relationship between the civil and military administrations should always be such that, should it become necessary for the army to move on to a continuation or re-

newal of hostilities, the civil affairs contingent may, with a minimum of interference with either civil or military administration, remain in the area and be capable of subsequently extending its sphere of activity to include any additional contiguous territory that may be occupied.

SECTION VIII

Illustrative Problem

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106. MAPS.—Any good general county map of Maryland and Virginia.

107. GENERAL SITUATION.—Maryland and the District of Columbia constitute a weak state (Brown) lying between two strong states, Blue (north) and Red (south). Diplomatic relations between Red and Blue have been strained for some time, and war between them seems inevitable. Blue is stronger than Red, and has control of the sea. A treaty has long existed between Blue and Brown pledging alliance in the event of war with a third state, but in the present controversy the public press and many prominent public officials of the Brown state have openly expressed sympathy with the Red cause. The Brown army consists of only two weak infantry divisions at Washington and one skeleton cavalry division at Baltimore. Washington is the capital of the Brown state.

108. SPECIAL SITUATION NO. 1 (BLUE).—The Blue state is in possession of definite information that the Brown state has recently entered into a secret agreement with

Red to repudiate her treaty of alliance with Blue and become an ally of Red in the event of war.

The plan of the Blue War Department is, promptly upon the outbreak of war, to land the Blue Second and Third Armies at Newport News and Norfolk (which points and vicinity are to be seized by the Blue navy on M day) and immediately march against the main Red forces which it is understood are to be concentrated in the area: Richmond—Charlottesville—Lynchburg. The Blue First Army, consisting of two corps, one cavalry division, and the necessary attached army troops, is promptly to occupy that portion of Brown territory between the Monocacy River on the west and Chesapeake Bay on the east, establish a bridgehead beyond Washington in Red territory with outposts along the general line: Potomac River at point south of Seneca—Fairfax—Woodbridge, and then stand ready to cooperate with the Blue main effort.

The approved plan of Lieutenant General A, commanding the Blue First Army, is to concentrate his forces in southern Pennsylvania at points suitable for a rapid advance across the Brown state *via* Baltimore and Washington, following the general line of the Northern Central Railway to Baltimore and the general line of the Baltimore and Ohio from that point to Washington. The contemplated distribution of the Blue First Army at the completion of this maneuver is as follows:

> Army headquarters and army troops at Washington.
>
> I Corps in the District of Columbia outside of Washington, and in adjacent Brown counties as may be necessary.
>
> Cavalry division holding the prescribed bridgehead in Red territory, with headquarters at Alexandria.
>
> II Corps in reserve in the general vicinity of Baltimore, with detachments guarding line of communications.

The Blue and the Red governments are similar in form to that of the United States. The government of the Brown state is as indicated in the following digest of information prepared by the Second Section, General Staff, First Army, as a basis for the formulation of plans for the military government of the territory to be occupied:

DIGEST OF MILITARY, POLITICAL, ECONOMIC, AND PSYCHOLOGIC INFORMATION ON THE BROWN STATE

(Prepared by Second Section, General Staff, First Army, from handbook and other data furnished by the Blue War Department.)

1. MILITARY SITUATION—(Negligible—omitted.)

2. POLITICAL SITUATION.

a. General government.—The Brown government is constitutional and representative in form.

The executive power is vested in a President elected by direct popular vote for a term of four years. He is assisted by a cabinet of five secretaries (State, National Defense, Finance, Interior, and Commerce) and subordinate agencies, the principal of which are the customs, postal, quarantine, internal revenue, and charities and hospital services.

Public utilities are supervised by a national Board of Commissioners consisting of three members. Persons or corporations furnishing heat, light, water, or power are subject to the regulation of this board in the matter of rates, schedules, and prevention of discrimination. From the decision of the board there is a right of appeal to the Secretary of the Interior.

The legislative power resides in a Congress composed of a Senate (26 members, term 4 years) and a House of Representatives (104 members, term 2 years), all elected by popular vote.

The franchise is granted only to persons assessed $250 or more on real property.

Debtors are protected in the possession of property to the value of $500.

There is a general local option law permitting each municipal division, if it so chooses, to forbid the sale of intoxicating beverages except for medicinal, sacramental, or manufacturing purposes. Such an ordinance was passed by the councillors of Baltimore in 1915, but it has failed through lack of enforcement.

The judicial department consists of a supreme court of appeals, courts of superior jurisdiction, county courts, inferior courts for criminal cases, and courts for juvenile delinquents.

b. Local government.—There are two classes of municipal divisions—county, and city or town. County councils consist of councillors elected every three years, one from each township. City or town councils consist of a mayor, and a councillor for each voting precinct, likewise elected every three years.

c. Political parties.—The two principal political parties are the Liberals and Conservatives. The former have been in power continuously for the past ten years.

3. ECONOMIC SITUATION.

a. Area: 12,270 square miles, of which 2329 square miles are water.

b. Climate, etc.—Border line between northern severe winter and open southern winter; frequent changes; great daily change; average temperature for January is 30 degrees F., that for July, 75 degrees F.; first and last killing frosts usually about October 1 and April 15, respectively; average annual rainfall 43 inches.

c. Population: 1,863,075, including 262,250 colored, 154,124 foreign-born, principally Germans and Russians, 7104 more women than men, 483,908 males of voting age, 371,373 males between the ages of 18 and 45 years, and a rural population of 757,154. Balti-

more (metropolis) has 658,485; Washington (capital) 330,000; Cumberland, 27,839; Hagerstown, 22,507; Frederick, 16,411; Annapolis, 12,609.

d. Production and industry: 48,923 farms aggregating 5,057,150 acres; value, including buildings, implements, and machinery, $286,167,028; average value of land per acre, $37; colored farmers own 122,039 acres, and lease an additional 228,117 acres. Farm products (corn, wheat, oats, potatoes, hay, tobacco, rye) $43,920,000 annually; domestic animals (cattle, horses, mules, sheep, swine), $30,649,961; poultry, $1,858,570; dairy products, $5,480,900; fishery products, $6,460,759; lumber and lumber products, $12,134,000; minerals (coal, clay products, black slate, sand, gravel), $11,292,723; manufactures (cotton fabrics, clothing, canned goods, cars and general shop products, sheet-iron, copper and tin products, fertilizers, slaughtering and meat products, tobacco, flour, and other grist mill products), $57 per capita; wage earners in manufacturing establishments 109,735, of which 32,248 are females.

Baltimore has a deep, spacious harbor with a 35-foot ship channel; contains 56% of all factories in Brown state; extensive foreign trade, especially in grain; large guano receiver; canal across Delaware gives direct commerce with Philadelphia; ship building is a leading industry; oyster and fruit canning industry is particularly important, also manufacture of distilled spirits; annual imports, $26,226,618, exports $113,550,042; water supply is from Lake Roland and the Gunpowder River, latter's flow being utilized through a tunnel.

Washington has very few manufacturing establishments, and is principally a residential and diplomatic center, with many large parks and fine public buildings.

e. Finance: 101 national banks, capital $16,000,710, surplus $11,761,710, cash $5,091,791, loans $95,354,675, deposits $91,912,716; 62 county banks, capital $2,997,945, surplus $1,673,455, loans and discounts $20,106,159, deposits $24,945,808; 52 savings banks (mutual and stock) with 285,585 depositors, and deposits aggregating $109,663,347; also a number of loan and trust companies.

f. Communications.—The Baltimore and Ohio Railway has 336 miles of single track within the state; Philadelphia, Baltimore and Washington, 321 miles; Western Maryland, 272 miles; Baltimore, Chesapeake and Atlantic, 88 miles; and the Northern Central, 77 miles. The Chesapeake and Delaware Canal connects the head of Chesapeake Bay with the Delaware River. Chesapeake Bay furnishes excellent water transportation, and the Potomac River is navigable as far up as Washington. There are 940 miles of single track electric railway in the state, also a good network of roads and of telegraph and telephone lines.

4. Psychologic Situation.

a. General racial characteristics: Industrious, but suspicious and vacillating; susceptible to propaganda; country stirred by strikes and local disturbances; much given to corruption in politics and governmental affairs; individually good fighters, but lack of national solidarity and of war materials and facilities minimizes danger of concerted resistance.

b. Education: Hindered by character and preponderance of rural population; 40.2% of population are illiterate; compulsory

education law exists, but is not enforced; pupils enrolled, 137,835; average daily attendance 75,007; National University at Baltimore, Normal School at Frostburg, Normal and Industrial School for Colored Students at Bowie, Washington College at Chestertown, and St. John's College at Annapolis—all receive federal aid. There are a number of other colleges and schools under the auspices of different religious denominations.

c. Religion: The Methodist and Catholic Churches far surpass all others in church communicants. Of other denominations, the strongest are Protestant Episcopal, Lutheran, Baptist, and Presbyterian.

d. Attitude toward other peoples.—Fear of foreign intervention is usually prevalent, with consequent pronounced hatred of foreigners in general. The Brown state at one time constituted a part of Red territory, but took advantage of a prior war between Red and Blue to declare and win her independence, since which time her autonomy has been guaranteed by Blue. Though hating Red, fear of annexation by Blue, caused by recent sporadic efforts of irresponsible groups of agitators, has caused the present reaction against Blue and espousal of the Red cause. It is believed by Blue, however, that the reaction is limited principally to the leaders of the governmental faction now in power, and that it does not represent the concensus of public opinion.

109. REQUIREMENTS UNDER SPECIAL SITUATION NO. 1 (BLUE).—*a. First requirement.*—Lieutenant General A's estimate of the military government situation.

b. Second requirement.—A brief outline of his plan for the proposed military government.

c. Third requirement.—His proposed staff organization for administering the military government, down to include divisions.

d. Fourth requirement.—His proposed initial proclamation to the inhabitants.

e. Fifth requirement.—His proposed supplemental regulations to be published at the beginning for the guidance of the inhabitants on the following subjects:

(1) Local laws; local civil officials; administration of justice.
(2) Municipal waterworks; light, gas, and power plants.
(3) Roads, railways, and street railways.
(4) Telegraph and telephone lines; cable terminals; radio stations and radio apparatus; pigeons.
(5) Canals and rivers; ships and shipping; mines and quarries.
(6) Ports; commerce; public revenues.
(7) Discrimination in prices; liquor traffic and habit-forming drugs.
(8) Carrying of arms; possession of arms or ammunition.
(9) Damage or destruction of property belonging to the Blue government; sale or unlawful possession of such property.

(10) Use of the enemy's uniform; display of the enemy's flag.
(11) Requisitions; contributions; billeting.
(12) Claims; complaints.
(13) Sanitation and public health; schools and charitable institutions.
(14) Circulation (*i.e.*, passage of persons and vehicles from place to place); identification cards; passes.
(15) Fraternization; assemblages; elections.
(16) Publications; censorship; strikes.
(17) Failure to obey lawful orders of military authorities; false statements to military officials; disrespectful or insulting language concerning the Blue government or the occupying forces.
(18) Local police force; military police.

f. Sixth requirement.—His instructions to a subordinate commander outlining the general procedure to be followed in taking over the government of the city of Baltimore immediately after its capture.

110. SOLUTIONS OF REQUIREMENTS UNDER SPECIAL SITUATION NO. 1 (BLUE).—*a. First requirement.—Lieutenant General A's estimate of the military government situation.*

(1) *Mission.*—To occupy, and establish a military government over, that portion of the Brown state between the Monocacy River on the west and Chesapeake Bay on the east; to establish a bridgehead beyond Washington in Red territory, and then stand ready to cooperate with the Blue main effort.

(2) *The Brown state.*—(a) The dominant factors are the lack of military strength, corrupt situation as to politics, considerable local resources in money and materials, good transportation and communication systems, susceptibility to propaganda, large percentage of illiterate, lack of national solidarity, fact that governmental faction now in power does not represent concensus of public opinion, and unlikelihood of concerted resistance to Blue.

(b) Lines of action open to Brown upon entry by Blue on Brown territory:

(i) To carry out her secret treaty with Red.
(ii) To remain in a position of enforced neutrality.
(iii) To carry out her treaty with Blue.
(iv) To assume an attitude of friendly neutrality.

(c) Probable intentions: To carry out her secret treaty with Red.

(3) *The Blue state.*—(a) Controlling considerations: The object of the war is the defeat of Red. The military government of the occupied territory is subordinate to military success. The annexation of Brown territory is not contemplated. Continuance or resumption of friendly relations with Brown is desired.

(b) Plans open to Blue:

I. As to character of the military government:

(i) To enforce a strict and harsh military government, using extreme force, and characterized by an unfriendly attitude. The advantages of this course are that Blue has ample power to carry it into effect, and it probably would be successful in preventing Brown from aiding Red; but it has certain serious disadvantages in that it would likely alienate the entire Brown state, including those now friendly, would probably necessitate an occupying force so large as to reduce the force available for employment against Red to such extent as to endanger Blue chances of success in the war, and might adversely influence international public opinion, thereby inviting an unfriendly attitude on the part of neutral states.

(ii) To enforce a strong and firm military government, using such force as may be necessary, but one characterized by an attitude of kindliness and friendliness. This course seems to have all the advantages stated above, would probably keep or win back the friendship of Brown, would tend to preserve the friendly attitude of neutral states, and would require much less force to accomplish, thereby permitting the maximum strength to be used against Red. There appear to be no disadvantages.

II. As to utilization of local civil officials:

(i) To remove all civil officials who are friendly to Red, and replace them with those friendly to Blue. This course has the advantage of removing from office the probable cause of Brown alignment with Red, of securing friendly officials who would be more likely to cooperate with the

military government, and of being almost certain to please the friendly element of the population. The main disadvantage is that this would antagonize the officials so removed. They are leaders of their party, and their activities can probably better be controlled when working for and under Blue. Being leaders, they undoubtedly have a strong following. By this removal, all chance of winning them to the Blue side, and through them their following, would be lost. Moreover, the military government would lose the benefit of the experience and knowledge of these officials in handling civil affairs, and the Brown state would likely be left in a situation that would invite trouble in the reestablishment of civil government at the end of the military occupation.

(ii) To retain existing public officials to the fullest extent possible, but with the mutual understanding that they are responsible and subordinate to military commanders in charge of civil affairs, and that such as are found who do not meet these requirements will be removed and replaced by friendly civilians. This course does not possess the advantages of that above mentioned, but it is minus the disadvantages and these seem to be dominant. The retained officials will require the closest scrutiny to prevent intercourse with Red, but it is believed that their activities can be controlled.

III. As to distribution of forces:

(i) To distribute the command generally throughout the area. This would facilitate the administration of the military governent but would hinder the further tactical employment of the troops.

(ii) To hold the bulk of the troops well in hand with a view to their further tactical employment. This properly subordinates the military government to the requirement that the troops stand ready to cooperate with the Blue main effort to the south.

(4) *Decision.*—To proceed with the military government along the lines indicated by I (ii), II (ii), and III (ii), above.

b. Second requirement.—Brief outline of the plan for the proposed military government.

(1) Distribution and territorial assignment of the First Army in the occupied territory:

(a) *General distribution.*—To keep the troops concentrated as far as practicable in the Baltimore and Washington areas, with exception of such detachments as may have to be sent to other centers to establish a sufficient occupation to maintain the military government. The policy will to be replace such detachments as soon as practicable by personnel from other sources.

(b) *Territorial assignment:*

Unit	*Headquarters*	*Area*
First Army Headquarters	Washington	District of Columbia.
II Corps	Baltimore	Counties of Carrol, Howard, Anne Arundel, Calvert, and counties to the northeast.
I Corps	Kensington	Remaining counties of occupied Brown territory.
1st Cavalry Division	Alexandria	The area constituting the bridgehead in Red territory.

Within their respective areas, corps commanders will assign districts and sub-districts conforming to political subdivisions, primary districts to include complete counties, except that the city of Baltimore may itself be constituted a separate primary district.

(2) Immediate changes to be made in the local governmental system:

(a) To subordinate civil control to military rule, the Commanding General, First Army, exercising all the usual supreme powers of a military governor within the occupied area.

(b) To suspend all diplomatic relations with the Red state.

(c) To interdict intercourse between occupied and unoccupied Brown territory except on permit from Blue district commanders.

(d) To make practically no other immediate changes, subsequent changes, if any, to depend upon the attitude and conduct of the inhabitants.

(3) Extent to which the more important local civil officials will be displaced and army officers appointed to fill their places:

(a) To suspend the President but retain him in the capacity of adviser to the military governor.

(b) The collectors of customs at all important ports will be displaced and army officers appointed to fill their places.

(c) No other civil officials will be displaced except as may be necessary by way of removal on account of incompetency or misconduct in office. The policy will be to retain them in their official positions and hold them responsible to the military officers in charge of the various areas, districts, and sub-districts within which their particular jurisdiction lies; the idea of this responsibility of local officials to military commanders to be emphasized from the very beginning of the occupation.

(4) Relationship which is to exist between the civil and military administrations:

(a) Acts of the legislature will not become effective until approved by the military governor. The acts of city and county or town councils will not become effective until approved by the military commanders having immediate jurisdiction over the political subdivisions concerned.

(b) In general, to pursue a liberal policy in all relations with the inhabitants, and to permit the greatest latitude in public and private affairs consistent with the rights and security of the military forces and the execution of such terms of peace as may later be agreed upon.

(c) To have prepared in advance and ready for issue at the same time as the proclamation, or as soon thereafter as possible, a detailed statement of policy and regulations covering the conduct expected from all concerned, in order that no misunderstanding may arise as to the rights and duties of the inhabitants.

(d) To decentralize the administration of the military government by means of a special organization of military personnel designed to facilitate the military supervision and, to the extent necessary, the military control of civil affairs in territorial districts and sub-districts conforming to the political subdivisions of the occupied area. The principal features of this special organization will be that each territorial district or sub-district will be placed under the control of a tactical commander, and that each tactical commander charged with duties pertaining to the supervision and control of civil affairs will have his staff increased by personnel to be organized as a special staff section. By this means the normal military staff (*i.e.*, that portion of the staff which is concerned with purely military affairs of the First Army) will be kept as nearly separate and distinct as possible from the staff concerned with the administration of civil affairs.

(e) So long as a tactical unit remains in a particular district or sub-district, its commander will exercise his usual functions of command through the agencies normally at his disposal. He will exercise his special functions relative to civil affairs through his general staff and specially created agencies, the latter so constituted that under all conditions they will be able to continue the performance of their special duties in the areas to which they are originally assigned.

(f) Every effort will be made to induce the inhabitants to resume their usual occupations. Public services and utilities will continue or resume operations under the direction and control of the military authorities. The administration of justice will be given special attention. Intercourse with Blue territory will not be interrupted. Commerce with neutral nations, in articles not contraband of war, will be encouraged, subject to the rates of duty in force at the time of importation.

(g) Tactical subdivisions of the First Army will not be used as essential units of control of the civil administration.

(h) Army officers will be appointed as commandants of counties, cities, and towns, where necessary, and will be superior to the highest local civil officials of those places. Assistant commandants will be similarly appointed for subdivisions of counties, cities, or towns, as may be necessary.

(i) All commandants and assistant commandants will be regarded as a part of the civil administrative staff of the tactical commander (army, corps, or division, as may be designated) within whose area they are located, and their activities will normally be supervised by such commander through his staff section in charge of civil affairs.

(j) Except in emergency, commandants and assistant commandants will not actually perform the duties of local civil officials, but will act in merely an advisory and supervisory capacity.

(k) When it becomes necessary for the First Army to move on to a renewal of hostilities, the civil affairs administrative machinery will remain in the area, and will extend its sphere of activity as may be necessary to include any additional contiguous territory that may be occupied subsequently.

c. Third requirement.—Proposed staff organization for administering the military government, down to include divisions.

The army and each of its corps and divisions will organize a separate staff section for the administration of civil affairs as prescribed in the solution to the preceding requirement. The chief of this section will be designated as *Officer in Charge of Civil Affairs,* and will have such assistants as may be necessary in each particular case.

The civil affairs section for the First Army will be organized into subsections as follows:

(1) Executive	Composed of executive officer and such assistants as may be necessary to handle personnel and coordinate general administration.
(2) Public Works and Utilities.	Public works of all kinds, public utilities, public buildings, mining, agriculture, forestry, and fisheries.
(3) Fiscal	General supervision of public finances, taxes, excises, banking, postal service, state insurance, foreign commerce, and customs service.

(4) Sanitation and Public Health	As indicated by name. Includes quarantine service.
(5) Schools and charitable institutions	As indicated by name. Includes religious societies and activities.
(6) Legal department	Supervision of municipal courts, prisons, provost courts, and military commissions; legal advice and opinions.

The organization of the civil affairs sections for corps and divisions will be along similar lines, though the functions of two or more subsections may be performed by one person. The personnel will be proportionate in numbers to the powers and responsibilities, in matters of military government, of the military commander on whose staff they serve.

This same principle will apply to the staffs, if any, of the commanders in charge of the smaller areas such as towns.

The Officer in Charge of Civil Affairs in each corps area, district, or sub-district, together with his staff section, will be subject to supervision and coordination in technical and routine matters by the Officer in Charge of Civil Affairs next higher in the hierarchy of military government, but all orders involving announcements or changes of policy, or affecting personnel, must come through the military commander in the usual way.

d. Fourth requirement.—Proposed initial proclamation to the inhabitants.

PROCLAMATION TO THE INHABITANTS OF OCCUPIED BROWN TERRITORY

The Blue military forces find it necessary to take possession of and occupy that portion of the Brown state lying between Chesapeake Bay on the east and the Monocacy River on the west. That territory and its inhabitants are now under Blue military rule.

For the time being, the political ties which have heretofore bound the inhabitants to their former sovereign are suspended. Hereafter, those inhabitants will respect and obey the laws, regulations, and authority of the commander of the Blue occupying forces.

The Blue forces of occupation will govern in strict accordance with international law and the rules and customs of war as sanctioned by the civilized world. So far as your attitude and conduct make it possible, your local courts, governing bodies, and institutions will be continued in operation under the supervision of the Blue

military authorities, except that your local criminal courts will not be competent to try offenses committed by or against members of the occupying forces.

Your present laws and ordinances will remain undisturbed and in force except where they affect the rights and security of the Blue military forces.

Implicit obedience to military authority is required of all. Inhabitants must refrain in word and deed from acts of hostility toward the occupying forces. All persons who cheerfully accept the sovereignty of the Blue state and peaceably obey the regulations prescribed will be protected in their persons, property, religion, and in all other private rights and relations. Those who do not so obey, or who commit or attempt to commit acts of hostility against the Blue military forces, will be brought to trial before military courts and severely punished.

The Blue forces of occupation are not here to make war on the inhabitants. They are here to insure an early return to a peaceful status It is now your duty, therefore, to devote yourselves to the orderly and obedient conduct of your private lives and affairs, to the maintenance of your schools, churches, hospitals, and charitable institutions, and to the resumption of your normal peacetime occupations. In these pursuits you will be assisted and protected by the occupying forces.

e. Fifth requirement.—Proposed supplemental regulations (1).

(1) LOCAL LAWS.—All local laws remain in full force and effect except as otherwise provided in these regulations or as specifically ordered from time to time by the Military Governor.

(2) LOCAL CIVIL OFFICIALS.—(a) All local civil officials, except those duly removed or suspended from office by the Military Governor or by the military commander having immediate jurisdiction over said officials, are required to remain at their posts and will be protected in the performance of their official duties. For the time being, officials will continue to function regardless of the expiration of their terms of office.

(b) Vacancies among local civil officials caused by death, flight, or removal from office will be filled as follows:

(i) Where the local laws provide for their selection by President or by the head of a department, or for their popular election—by the Military Governor.

(ii) Where the local laws provide for their selection by a subordinate civil official or by county or municipal council—by the military commander having immediate jurisdiction over the said official or council.

(c) Wilful abandonment of his post by a civil official or by an officer or employee of a public utility, or refusal by any such person to perform his appropriate duties, whether or not the result of agreement, is an offense against the occupying power, punishable by fine or imprisonment, or both, as a military tribunal may direct.

(d) Any civil official found guilty of espousal of the Red cause, or of agitation against Blue authority, will be subject to such punishment as a military commission may direct.

(3) ADMINISTRATION OF JUSTICE.—(a) All courts, unless specifically excepted by the Military Governor, will remain open and their decisions will be enforced by the civil authorities. The following exceptions to the jurisdiction of such courts are announced:

(i) No person subject to Blue military or naval law will be subject to any process of the local courts, except the writ of subpoena, and this writ will not be issued to any such person without prior authority of his commanding officer.

(ii) Residents of Brown territory charged with violations of military orders, or with offenses against the person or property of members of the occupying forces, or against the laws of war, will be tried as follows:

> Where the offense is punishable with death, or imprisonment for more than three years, or a fine of more than $1000—by a military commission appointed by the commander of the occupying forces.
>
> In other cases—by a provost court appointed in accordance with regulations prescribed by the commander of the occupying forces.

(iii) Persons employed by or in the service of the occupying forces shall be subject exclusively to the military law and jurisdiction of such forces.

(b) The Military Governor may authorize the commencement of civil proceedings in the local civil courts in the name of the Brown state in all cases in which the Brown executive possessed that power under Brown law.

(c) The death penalty, whether imposed by civil or military courts, requires confirmation by the Military Governor prior to its execution.

f. Fifth requirement.—Proposed supplemental regulations (2).

MUNICIPAL WATER WORKS AND LIGHT, GAS, AND POWER PLANTS.—(1) These plants will remain open and will function as in peace.

(2) When an extension of utilities is required by a local commander for the comfort or supply of his troops, a technical requisition therefor will be prepared, after consultation with the area, district, or sub-district engineer. This requisition, on approval by the area, district, or sub-district commander, will be served on the civil officer having power under Brown law to order the extension. It thereupon becomes a valid order, and requires immediate obedience; but the manager of the utility has the right to submit a protest to the commander of the occupying forces.

(3) The Army Engineer, with approval of the commander of the occupying forces, has the power to cancel all extensions requisitioned by local military authorities, and to prescribe regulations governing the technical management of utilities, binding alike on military personnel and civilians.

(4) Local utilities are entitled to payment for services rendered to the Blue forces of occupation at the pre-war rates prescribed for Brown Government uses.

(5) The Commissioners of Utilities, under the supervision of the Director of Public Works, will continue to exercise their normal functions. Appeals formerly made to the Secretary of the Interior will hereafter be made to the Military Governor.

(6) Existing wage scales of employees of these utilities will not be altered without authority from the Military Governor.

(7) Any wilful damage to or interference with any municipal waterworks, light, gas, or power plant, or any other public utility, in a manner prejudicial to the security, efficiency, or comfort of the occupying troops, will be considered an offense against the occupying military forces and will be punished as a military tribunal may direct.

g. Fifth requirement.—Proposed supplemental regulations (3).

ROADS, RAILWAYS, AND STREET RAILWAYS.—(1) All railways needed for military purposes will be seized and operated under the direction of the Army Engineer. Those in advance of regulating stations will be operated by military personnel; all others by civilian personnel under military supervision.

(2) Where civilian personnel is used, civil railways are entitled to payment for services rendered to the Blue forces of occupation at the pre-war rates prescribed for Brown Government uses. Where military personnel is used, no payments will be made except for material requisitioned.

(3) Wage scales of railway employees will not be altered without authority from the Military Governor.

(4) Where a corps rear boundary is fixed, road maintenance in advance thereof will be performed by military personnel. All other road maintenance within the occupied area is the duty of the civil highway officials, who will be held responsible for the maintenance of roads in first-class condition.

(5) The utilization of local highway officials in corps areas is at the discretion of corps commanders. Civilians will not be used on road work within range of hostile guns.

(6) Subject to the rules for circulation, street cars will operate as in time of peace. Should cars or transportation be needed by the local military officials, requisitions therefor will be made in the usual manner. When in use for troop transportation or supply purposes, street railways and their equipment will be subject to military control and regulation as prescribed in the case of railways.

h. Fifth requirement.—Proposed supplemental regulations (4).

TELEGRAPH AND TELEPHONE LINES; CABLE TERMINALS; RADIO STATIONS AND RADIO APPARATUS.—(1) All telegraph and telephone lines, cable terminals, and radio stations, together with their equipment, will be taken over initially by the Army Signal Officer. He will prescribe

which will be operated by army personnel, which closed, and which operated by civil companies; and, in case of the latter, will requisition the services of the personnel, either individually or as an organization, as he may deem advisable. All private radio apparatus will be turned in to the local military commander.

(2) The use by civilians of telegraph, telephone, or cable lines and of radio systems will be permitted only under regulations prescribed by the Army Signal Officer and approved by the Military Governor.

(3) Any wilful damage to or interference with telegraph, telephone, cable, or radio systems will be considered an offense against the occupying military forces, and will be punished as a military tribunal may direct.

PIGEONS.—The use of carrier pigeons is forbidden. Owners of carrier pigoens will immediately report their pigeon cotes to the local military commander, and will furnish him with a list of the marks of their pigeons. Pigeon houses must be kept open day and night.

i. Fifth reguirement.—Proposed supplemental regulations (5).

(1) CANALS AND RIVERS.—(a) Canals, rivers, and canal and river boats will initially be seized and operated by the Army Engineers. Lock tenders will be required to continue in the performance of their duties.

(b) As soon as a corps rear boundary is established, the canal companies will be required to resume or continue operation on all lines in rear thereof. Traffic priority and charges will be regulated as prescribed in the case of railways.

(2) SHIPS AND SHIPPING.—(a) Blue ships recaptured before action has been taken by a Brown or Red prize court will be returned to their owners.

(b) Blue ships recaptured after prize court action, Red ships, and Brown ocean-going ships, will be turned over to the Blue navy for delivery to a Blue prize court.

(c) Neutral ships will be given the option of clearing in ballast, or of remaining until export regulations are prescribed.

(d) Brown vessels, other than ocean-going ships, shall at once be registered with the Collector of the Port of Baltimore, and each given a distinguishing number which shall be conspicuously painted on both sides. They will then be permitted to resume their normal operations subject to the restrictions set forth below.

(e) No Brown watercraft of any description shall navigate, between sunset and sunrise, the waters of Chesapeake Bay, its tributaries, or the ocean within twenty miles of its entrance. The local Blue Navy commander will, from time to time, declare certain described water areas closed to navigation.

(f) The army engineer is empowered to take over any ferry or water transportation lines regarded as necessary to supplement railroad lines, and will operate them under the same regulations, insofar as they apply, as are prescribed for railways.

(g) All Brown watercraft, including operating personnel, is subject to requisition for Blue military or naval purposes.

(3) MINES AND QUARRIES.—(a) These may continue to operate as in peace, except as prescribed below.

(b) All explosives on hand must be reported to the local military representative. The manager of a mine or quarry is responsible that the explosives are used only for proper purposes. Where the local stock is large, a guard therefor will be furnished by the local military commander.

(c) Blue requisitions have priority over all other orders at mines or quarries.

(d) Quarries of road material in corps areas may be exploited by corps engineers, if desired by corps commanders.

j. Fifth requirement.—Proposed supplemental regulations (6)..

(1) PORTS.—(a) The general policy of the military government will be to interfere as little as possible with normal port service. Except as hereinbefore prescribed as to ships and shipping, and as soon as the military situation

permits, merchant vessels engaged in legitimate trade with neutral or friendly states will be permitted to pass freely in and out of all Brown ports, subject to the usual port regulations and the regulations governing contraband of war.

(b) The port regulations now in effect, insofar as they do not conflict with the success and safety of the military government or tactical success of the Blue Army, and except as hereinbefore modified as to ships and shipping, and hereinafter as to commerce, will continue in effect during the pleasure of the Military Governor.

(2) COMMERCE.—(a) The general policy of the military government will be to encourage, foster, and protect all citizens of the Brown state in the energetic pursuit of legitimate interior and exterior trade relationships.

(b) It shall be unlawful for inhabitants of the Brown state to engage in any form of traffic with the enemies of the Blue state, or to engage in commerce with foreign states in articles contraband of war, or to export money, gold, silver, jewelry, or other similar valuables for the time being.

(3) PUBLIC REVENUES.—(a) The general policy of the military government will be, not to divert any of the public revenues from their normal uses except to defray the legitimate expenses of the military government.

(b) Taxes, excises, and customs duties, collected at the present legal rate by agencies already operating or otherwise provided for in orders issued by the Military Governor, will be turned over to the military government for accounting and disbursement according to law.

(c) Supplies for the forces of occupation, and the carriers of same while employed as such, shall be exempt from taxes or other public revenue charges of any nature.

k. Fifth requirement.—Proposed supplemental regulations (7).

(1) DISCRIMINATION IN PRICES.—(a) Discrimination in prices by overcharging members of the occupying forces or other Blue nationals for labor, services, goods, wares, or merchandise is forbidden.

(b) Each article displayed in show windows shall have its price attached, and all articles in the establishment, with price of each, must be listed in a conspicuous place.

(2) LIQUOR TRAFFIC.—The general local option laws of the political subdivisions of the Brown state will be strictly obeyed. The sale or gift of alcoholic liquors to members of the occupying forces is prohibited.

(3) HABIT-FORMING DRUGS.—The manufacture, sale, barter, exchange, or introduction into the country of habit-forming drugs for other than medicinal or industrial purposes is prohibited.

l. Fifth requirement.—Proposed supplemental regulations (8).

(1) CARRYING OR POSSESSION OF ARMS OR AMMUNITION.—(a) All arms, ammunition, or other deadly weapons of any character or description whatsoever, will be deposited at such place and by such date as may be designated by the local district or sub-district commander, who will cause receipts to be issued for same, and the articles tagged with the names of the owners.

(b) On and after the date so designated, the carrying or possession of arms, ammunition, or other deadly weapons is prohibited except on written permit issued by the local district or sub-district commander, who will in no case issue such permits except to local security police and private guards or watchmen, including bank employees and payroll messengers, or for limited periods for hunting purposes.

(c) Frequent check of all licensed firearms and ammunition will be made pursuant to inspections ordered by the local district or sub-district commander.

m. Fifth requirement.—Proposed supplemental regulations (9).

(1) DAMAGE, ETC., OF PROPERTY OF BLUE STATE.—(a) Whosoever destroys, damages, sells, buys, receives in pawn, or otherwise unlawfully has in his possession articles of clothing, equipment, rations, or other property belonging to the Blue state or issued to individual members of the oc-

cupying forces, shall be punished as a military tribunal may direct.

(b) Possession of such articles by anyone other than a member of the occupying forces shall be considered as *prima facie* evidence of violation of the foregoing provision unless such person has in his possession a properly authenticated bill of sale or permit executed by an official duly authorized to issue said bill of sale or permit.

n. Fifth requirement.—Proposed supplemental regulations (10).

USE OF ENEMY UNIFORM; DISPLAY OF ENEMY FLAG.—The wearing of the uniform of either the Brown or the Red army, or display of the flag of either the Brown or the Red state, upon any occasion whatsoever, is prohibited for the time being.

o. Fifth requirement.—Proposed supplemental regulations (11).

(1) REQUISITIONS.—(a) Requisitions shall be regarded as exceptional, and shall be used only when normal methods of procurement are impracticable or fail to produce what is needed at a fair price. Subject to this limitation, real property, supplies, services, or labor necessary for the maintenance of the occupying forces may be obtained by requisition.

(b) Except in case of emergency, requisitions may be made only by officers duly designated by the Military Governor. The names of the officers so designated will be furnished to the local civil authorities. In case of emergency, a regimental or higher commander, or any commander of a unit acting independently or separated from the organization to which it belongs, may procure by requisition what is immediately needed by his command.

(c) Requisitions will be made upon the civil authorities, when practicable, rather than upon the individuals from whom property, services, or labor is desired. The local civil officials upon whom requisitions may be made will be designated by the Military Governor. They will be held responsible for the prompt filling of requisitions prop-

erly submitted. Both demand and payment will be for property, services, or labor in bulk, thus leaving the civil authorities to do their own bookkeeping and permitting them to distribute the demand so as to reduce distress among the people to a minimum.

(d) In case requisitions are not filled promptly by local civil officials or others to whom addressed, the officer who submitted each such requisition will call upon the military commander, within whose district or jurisdiction the case arises, for troops to enforce same, and will also take steps to bring the offending civil officials or other persons to trial before appropriate military tribunals.

(e) The hoarding, concealing, or otherwise disposing of food, fuel, or other supplies, so as to prevent the filling of requisitions properly made therefor by the Blue military authorities, is prohibited.

(f) Supply or labor requisitions will not be for excessive amounts, and will either be paid for in cash at a fair valuation, or receipts will be given and cash payment made as soon thereafter as practicable. Local civil officials to whom cash payments are made will be held responsible for the immediate transfer of such payments, in their entirety, to the persons who actually furnished the supplies or services.

(g) The amounts and character of supplies or labor that may be obtained by requisition, and the prices to be paid for same, will be fixed by the Military Governor after survey of the supplies and labor available in the country and consideration of the needs of the civil population.

(h) Real property, either unimproved land or land improved by buildings or otherwise, or easements such as rights of way, may be requisitioned when necessary, except as otherwise stated in these regulations. When a building is requisitioned, its necessary and pertinent personnel (janitors, charwomen, mechanics, etc.) are automatically requisitioned with the building unless otherwise specified.

(2) CONTRIBUTIONS.—Contributions may be levied only by the Military Governor, and he may levy them only in case of absolute necessity.

(3) BILLETING.—Billeting in private dwelling houses will be resorted to only when other available buildings, especially public buildings or those of a public nature, are inadequate or unsuitable. Schools, hospitals, churches, and the buildings of charitable institutions are exempt from use for quartering purposes.

p. Fifth requirement.—Proposed supplemental regulations (12).

CLAIMS; COMPLAINTS.—(1) Inhabitants of the Brown state who deem themselves injured in person or property, or by any invasion whatsoever of their rights as peaceful citizens, through acts committed by members of the occupying forces, may apply for redress to the local military commander through the local civil official designated by proper authority to receive such applications.

(2) The local civil official so designated will be required to forward such applications without delay. If he receives no such applications during the period of any calendar week, he will so state by a signed report forwarded at the end of each such week.

(3) An application for redress must state fully the act or acts complained of, the character and extent of damage suffered, and the time and place of the commission of the said acts or injury, in order that a just and equitable settlement may be effected and the offenders punished. Each application must be supported by the affidavits of at least two reputable witnesses, and must be sworn to before an authority competent to administer oaths.

(4) The submission of false or fraudulent claims will subject the offender to severe punishment.

q. Fifth requirement.—Proposed supplemental regulations (13).

(1) SANITATION AND PUBLIC HEALTH.—(a) The chief medical inspector of the Blue forces located in each area, district, or sub-district will have general supervision over sanitation and public-health matters therein, including the practice of medicine and surgery, subject to the provisions

of local law and such special regulations as may be published from time to time.

(b) Special attention will be given to hospitals and sanitariums, public water supply, dairies, slaughter houses, markets, dumps, incinerators, sewage and other systems of a similar nature, the prevention of harbor and river pollution and other nuisances, general sanitary condition of housing and means of transportation, quarantine matters, and the prevention of social and other communicable diseases.

(2) SCHOOLS AND CHARITABLE INSTITUTIONS.—The laws of the Brown state governing attendance at schools will be enforced. Charitable institutions, churches, and other reputable religious organizations will not be molested.

r. Fifth requirement.—Proposed supplemental regulations (14).

(1) CIRCULATION.—(a) All circulation (*i.e.*, the passage of persons and vehicles from place to place) within occupied territory will be controlled by the Blue military authorities, will be limited to that incident to normal peacetime pursuits, and will be permitted during daylight hours only. Exceptions to this restriction insofar as it relates to hours will be made in the case of physicians, railroad employees, night laborers, and other individuals as circumstances warrant.

(b) Circulation between occupied Brown territory and unoccupied hostile territory is prohibited.

(c) Circulation between occupied Brown territory and occupied Red territory is prohibited except to persons holding special authority granted by the Military Governor.

(d) Individuals entering the occupied territory will be registered at the port or place of entry and will comply with the provisions contained in these regulations.

(e) A daily report of new arrivals will be rendered to the local military commander by all hotels and lodging houses.

(2) IDENTIFICATION CARDS.—(a) Every inhabitant of the occupied territory who has attained the age of 12 years

will be required to carry at all times on his person, an identification card of prescribed form, bearing the full name, nationality, sex, date of birth, description, home address, occupation, photograph (3 x 2 inches), and signature of the individual to whom issued. All entries thereon will be attested by the clerk of the municipal subdivision of which the individual is resident.

(b) Any change of address on the part of the holder of an identification card will be immediately reported to the appropriate civil authority and indorsed by him on the card.

(c) Bearers of identification cards will produce same when called upon by proper authority, civil or military, to do so.

(d) The head of each household must keep posted on the inside of the outer door of the building a list showing the name, nationality, sex, age, and occupation of every person of his household residing in the building.

(3) PASSES.—(a) Passes for travel within the occupied territory will be granted by authority of sub-district or higher military commanders. In special cases, as where travel between certain points is constant, passes may be permanent.

(b) Passes to leave the occupied territory will be granted only on authority of the commander of the occupying forces.

(c) The actual preparation, issue, validation, and revision of passes and identification cards will be performed by such civil officials as may be designated by proper military authority.

s. Fifth requirement.—Proposed supplemental regulations (15).

(1) FRATERNIZATION.—There can be no intimate personal relations between public enemies. Fraternization is therefore prohibited for the time being. Official relations with Brown inhabitants will be characterized by an attitude of dignity, courtesy, and reserve on the part of the members of the occupying forces.

(2) ASSEMBLAGES.—(a) The civil population will avoid assembling in crowds and will go quietly about their normal affairs of life.

(b) Indoor assemblages for other than church services, school purposes, or sessions of courts or councils will not be allowed except by permission of the local military commander.

(3) ELECTIONS.—All national and municipal elections are suspended for the time being.

t. Fifth requirement.—Proposed supplemental regulations (16).

(1) PUBLICATIONS.—(a) No newspapers, magazines, books, or other documents which tend to criticize, ridicule, or excite hostility against the occupying forces or the measures employed by them in prosecuting the war or exercising the present military government, or by means of which information or encouragement is conveyed to the enemy, will be published, imported, sold, or given away.

(b) A copy of each newspaper or other periodical publication will be delivered to the local military commander immediately on issue.

(c) Offenders against these provisions will be punished by confiscation of stocks, suspension of business, or trial by military tribunal, as directed by the local military commander.

(2) CENSORSHIP.—All mail is subject to the censorship of the Blue military authorities. The telegraph, long-distance telephone, radio, moving picture productions, and theatrical performances are similarly subject to censorship in special cases where permission to use or produce same has been granted by the proper military authority.

(3) STRIKES.—(a) All laborers who have voluntarily entered the service of employers engaged in work for, or that is announced as necessary to the maintenance of, the Blue forces of occupation, or who are working for the said forces of occupation, under requisition or otherwise, are forbidden jointly or in conspiracy to plan, attempt, or carry out any scheme to strike or abandon work, or to aid or abet

such scheme in any way. Persons offending in such manner will be subject to trial and punishment by military tribunal, and will also, in the discretion of the local military commander, be required to continue in the performance of their duties.

(b) Disputes concerning labor conditions, rates of pay, etc., will be amicably settled by conference between the employers and employees concerned. When satisfactory adjustment cannot be made in this manner, the matter will be referred to the local Blue military commander for decision.

u. Fifth requirement.—Proposed supplemental regulations (17).

FAILURE TO OBEY LAWFUL ORDERS; FALSE STATEMENTS; DISRESPECTFUL OR INSULTING LANGUAGE.—The violation of any proclamation, regulation, or lawful order issued by, or the making of any false or fraudulent statement of fact to, any Blue military offical in the execution of his office; or the use of language or actions tending to incite contempt of, or resistance to, such official; or the use of disrespectful, scandalous, slanderous, or insulting language or actions toward or concerning the Blue government, or the occupying forces, or any person or persons belonging thereto or connected therewith, will be punished as a military tribunal may direct.

v. Fifth requirement.—Proposed supplemental regulations (18).

(1) LOCAL POLICE.—(a) The local police in all municipalities, unless removed or suspended from office, will continue to function as heretofore, and in addition will cooperate with the Blue military police, as hereinafter specified, in the enforcement of regulations and orders promulgated by the commander of the occupying forces.

(b) The arrest or molestation in any way of members of the occupying forces by local police is forbidden. In cases involving crimes or misdemeanors committed by members of the occupying forces and brought to the attention

of or discovered by local police, complete reports will be made in writing to the local military commander.

(c) Where an offender is not a member of the occupying forces, and an arrest is made for an offense that is in violation of Brown law and also of Blue regulations or orders, or of the laws of war, a complete report of the case will be made in writing to the local military commander and his decision received before the offender is brought to trial.

(d) Local police may, when on official duty only, carry concealed weapons as heretofore authorized by local police regulations.

(2) MILITARY POLICE.—(a) The military police will function in all municipalities occupied by or in close proximity to Blue forces, and at such other places as deemed necessary by the Military Governor.

(b) In general, the military police will maintain law and order and protect public and private property. In cases of violation of or injury to such property by members of the occupying forces, the assistance and cooperation of the local police will be limited to the furnishing of information as described above.

(c) Traffic regulations will be enforced under the direction of the local Provost Marshal, by the local traffic police supervised, so far as may be necessary, by the military police.

(NOTE.—For additional items that should receive consideration in connection with these regulations, see Appendix B, No. 38.)

w. Sixth requirement.—Instructions to a subordinate commander outlining the general procedure to be followed in taking over the government of the city of Baltimore immediately after its capture.

These instructions would take the form of a letter from the Blue army commander to the commander of his cavalry division reading substantially as follows:

"(1) As your division is to lead our advance into new territory, it is considered proper to direct your attention at this time to certain matters respecting the civil population.

"(2) The problem of evacuating individuals or bodies of the civil population from the danger zones and of providing them with transportation, subsistence, shelter, and medical attention, will be ever present as the advance progresses. In principle, the

front-line divisions will evacuate the civilians to their division rear boundaries, but they will often have to be assisted in this by personnel from the Corps or Army, and perhaps also by the established civil government agencies of the enemy insofar as these may be utilized without interference with the conduct of the operations of our armed forces.

"(3) The matter of the exercise of military government over the civil population during the early stages of the occupation requires special mention. The moment that enemy territory is occupied, it becomes our duty under international law to administer the government of the occupied area. Inclosed herewith are copies of the plan for the military government of occupied territory, also a number of copies of the proclamation and supplemental regulations to be issued at the beginning. These will indicate the policy to be adopted and the methods to be employed insofar as you may be able to deal with them.

"(4) It is recognized that your principal business will be that of fighting and advancing, and that, during the early stages at least, you will have but little time for military government matters. Nevertheless, certain preliminary steps should be taken in the general direction or along the lines of the military government that is later to be established. To that end, it is directed that, immediately upon the capture by your forces of the city of Baltimore, your procedure be substantially as follows:

"(a) Send at once for the mayor and the chief of police.

"(b) Hand them copies of the proclamation and supplemental regulations, and direct attention to important special points covered by same.

"(c) If the mayor or chief of police is absent, direct the official next in rank or a suitable civilian to act in his place.

"(d) Inquire whether local civil officials are going to continue to serve and, if not, name successors.

"(e) Get from the mayor a map of the city showing locations of all banks, hospitals, railroad stations, telegraph offices, libraries, and all public buildings.

"(f) Inquire as to what added police protection is considered necessary in view of the new situation.

"(g) Direct the mayor to inform his people that they are to refrain from assembling in crowds and that they are to go quietly about their ordinary affairs of life.

"(h) Direct the mayor to prohibit the sale or gift of all alcoholic liquors, and the sale, gift, or carrying of deadly weapons, ammunition, or explosives.

"(i) Direct the mayor to provide billets for so-many men, and to furnish such-and-such supplies (as fuel, forage, and straw).

"(j) Inform the mayor concerning requisitions and direct that he name local civil officials as representatives to whom requisitions may be submitted.

"(k) Take possession of all telegraph and long-distance telephone lines, also cable terminals and radio stations.

"(l) Direct the mayor to cause newspapers to publish the proclamation and supplemental regulations and to give same the widest distribution possible, especially in advance of our troops in the direction of Washington.

"(5) As soon as the II Corps representative in charge of civil affairs arrives, he will come under your command and so continue so long as you remain in command of the area.

"(6) Although the foregoing instructions have special reference to the city of Baltimore, they are applicable in general to the city of Washington, or to any other city which your division may capture.

"(7) It might be well to add at this time that the bridgehead to be established in Red territory is to be administered practically as a combat area, with the tactical features highly dominating."

111. SPECIAL SITUATION NO. 2 (BLUE).—On December 18, 1922, prior to the beginning of hostilities, Lieutenant General A received the following instructions from the commander of the Blue Field Forces:

"It is believed at the Blue War Department that the Red-Brown coalition will sue for peace as soon as Baltimore and Washington have fallen into our hands and the Second and Third Armies have been landed at Newport News and Norfolk, in which case the plan is for the First Army to take over and administer the entire Brown state, together with the bridgehead in Red territory as planned, pending the conclusion of negotiations at the peace table. Please formulate and submit without delay your views as to the modifications that this would necessitate in your plan for the establishment and administration of the military government. It should be borne in mind that our government has no thought of permanent conquest, and that fact must be firmly and persistently impressed upon the minds of the inhabitants of the occupied territory."

112. REQUIREMENT UNDER SPECIAL SITUATION NO. 2 (BLUE).—A brief outline of the modifications proposed by Lieutenant General A in accordance with the foregoing instructions.

113. SOLUTION OF REQUIREMENT UNDER SPECIAL SITUATION NO. 2 (BLUE).—*Brief outline of modifications proposed by Lieutenant General A.*

Very few modifications will be made. Those recommended are as follows:

(1) Extend the occupation so as to include the Brown territory east of Chesapeake Bay and that west of the Monocacy River, thereby making the military government applicable to the entire Brown state.

(2) Publish an additional proclamation announcing the new boundaries and strongly stressing the fact that Blue has no intention of permanent conquest.

(3) Change the regulation on fraternization so as to permit dignified friendly relations between members of the occupying forces and the civil population.

(4) Permit the resumption of theaters and moving picture entertainments, both under strict censorship.

(5) Permit the election of civil officials other than national to be resumed in accordance with local law, so supervised by the military authorities as to assure that they are fair, that they are held in an orderly manner, and that all persons of voting age are protected in the exercise of the franchise.

(6) Relax somewhat the strict character of the military government in the Red territory comprising the bridgehead, but still continue to administer same largely as a combat area.

(7) Make a somewhat wider distribution of the occupying military forces, still adhering to the principle of maximum assignment of territory with a minimum distribution of troops.

(8) Relieve combat troops from duty in connection with the administration of the military government, as soon as and to the fullest extent possible, in order that they may be kept in a better state of training and discipline, and so that they may be in a better position to meet the ever-present possibility of having to resume hostilities. Additional reasons are that this would result in less chance of friction between the occupying forces and the Brown inhabitants, and that the latter would thereby be better assured of the announced intention of the Blue state to refrain from permanent conquest and of the desire of the army commander to free the civil government from military domination, so far as possible, as soon as their conduct permits.

114. DISCUSSION.—*a*. This problem is so drawn as to require plans to be prepared beforehand covering in general the entire period from the beginning of operations up to the time that the military government has settled into comparative prominence and importance. The tactical situation continues throughout, as it almost always will, to be the dominant factor.

b. It should be borne in mind that military government is not created suddenly. It is a development which takes place between the situation which obtains in terri-

tory at the beginning of its invasion and that which obtains therein after active hostilities have ceased or have been transferred to another theater. During the first part of this period, G-1 of the occupying force is charged with the responsibility of dealing with the civil inhabitants, arranging for their evacuation from areas which are battle-swept or likely to become so, and seeing that they are provided with the necessary transportation, subsistence, shelter, medical attention, etc. The close of the period finds the occupation an accomplished fact and the military government fully established under the special staff section created for that purpose. To attempt to install the complete prearranged military government machinery over occupied enemy territory too soon, as at the moment of its capture or while hostilities are still flagrant, would be as great a mistake as to expect or permit G-1 to administer it throughout. The transition calls for close cooperation and the exercise of tact on the part of all concerned, keeping in mind that all general staff sections continue throughout to function in the usual way respecting military government matters which come within their respective provinces.

c. It must be remembered that the plans are prepared before hostilities have actually begun. It cannot be assumed that the occupation of Brown and Red territory will terminate with the conclusion of negotiations at the peace table, since that will depend entirely upon the terms of the peace that is negotiated. Foreign armies continued on German soil far beyond the ratification by their respective governments of the treaties of peace closing the World War.

d. The plan for the proposed military government must contain a definite statement by the army commander as to how he intends to distribute his military forces in the occupied area, and the question naturally arises as to how far he should go in this respect. He might go so far as to prescribe the areas of divisions other than the cavalry division, but in this case that has been left to the respective corps commanders for the reason that this course reposes in them a greater measure of confidence and would tend to

cause them to assume a greater degree of responsibility for the administration of the military government.

e. It is advisable to reserve an area for Army Troops, preferably the District of Columbia or the city of Washington, and place its immediate administration under a Headquarters Commandant.

f. This occupation is to be a hostile one, maintained at first for the purpose of enforcing a satisfactory treaty of peace, and maintained thereafter, for such period as may be necessary, for the purpose of compelling compliance with the peace terms that may be agreed upon. So long as the occupation continues, therefore, the possibility of a resumption of hostilities must be recognized and provided for. For this reason special staff sections for handling matters pertaining to civil affairs are provided for tactical units down to include divisions.

g. So far as practicable, civil affairs sections of the staffs of subordinate units should be organized along the same lines as those of higher units, even though the functions of two or more of the subsections be performed by the same officer.

h. (1) The plan submitted must convey to the commander of the Blue field forces a definite idea as to the functional relationship which is to exist—

(a) Between the civil and military officials.
(b) Between those portions of staffs which are to administer purely civil affairs and those which are to administer purely military affairs.
(c) Between the civil affairs sections of higher and those of subordinate units.

(2) As to (a), army officers should be designated as commandants of counties and cities, and as assistant commandants of subdivisions of those places, as may be necessary, each to be the superior of the local civil officials of his area, not to perform the duties of local civil officials but to act in an advisory and supervisory capacity. All such commandants and assistant commandants should be regarded as a part of the civil administrative staff of the tactical commander (army, corps, or division) within whose

area they may be located. Their activities will normally be supervised by such commander through his officer in charge of civil affairs, whose activities will in turn be coordinated in the usual way by the general staff.

(3) With reference to (b) and (c), some statement must be included which makes the proposed relationship clear, and which leaves no doubt as to whether the staff sections for civil administration are to be kept as nearly separate as practicable from the purely military staff sections in order that there may be a minimum of interference with either civil or military administration should the army move on to a continuation or renewal of active hostilities.

i. It is important that the staff organization for civil administration include a subsection charged with the supervision of legal and allied matters. The administration of justice is not only essential to the happiness and welfare of the inhabitants themselves, but it is vital to the maintenance of control by the occupying forces. It is also important that a subsection charged with the supervision of public works and utilities be included. The continuance in operation of these activities is essential to the comfort and contentment not only of the inhabitants themselves, but also of the occupying forces.

j. There are two distinct possible methods of handling public utilities. Either direct operation and control by the military may be employed, or administration may be effected through the local civil authorities already in charge. The latter seems to present the greatest advantages. It causes a saving of military personnel, utilizes the facilities and benefits derived from an established organization, and places the operating responsibility upon officials who are accountable to the civil administration. They may be furnished assistance in the way of supplying coal, etc., and also in adjusting difficulties arising from the extra burden placed on their plants by reason of the military occupation. In the case of waterworks, for instance, the added amounts of water needed by the troops, especially during the warm months, may require the installation of additional plant

units, or the conservation of water in various ways may be necessary, such as by causing animals and motor and animal-drawn vehicles to be washed in streams or lakes.

k. Each military commander should be supreme in his own area, subject only to his military superiors, and should be responsible for the administration of the military government in that area. Officers in charge of civil affairs should not, therefore, supervise the activities of the civil affairs sections of the next subordinate units. Purely technical or routine matters may be handled in that way, but otherwise orders from superiors respecting the military government in any area should go to the commander of that area, not to his staff.

l. The congress of the Brown state might be prorogued, but it is better to permit it to continue its legislative functions, an absolute power of veto being reserved to the military governor. Unquestionably the latter will have supreme legislative powers, but he will need a representative advisory body on legislative matters and this can best be provided by retaining the normal legislature until the necessity for its discontinuance becomes apparent. Retention by the military governor of the power of approval or disapproval will be a sufficient check upon the propriety of legislation. County and city or town councils are retained, at least in an advisory capacity, for similar reasons.

m. The appointment or designation of Brown plenipotentiaries to the peace conference need not be considered at this time, for that is a matter which will probably be arranged by the Blue home government.

n. In order to provide an indirect method of raising funds for the military government, and in view of the probability that an indemnity will be exacted at the peace table, it is believed that the principal customs officials should be replaced early by Army officers.

o. Commerce with foreign countries, excepting Red, in articles not contraband of war, should be encouraged since this would not only provide an important source of revenue but would also be in the direction of a return to

normal conditions. Rigid restrictions should be imposed upon the exportation of money, gold, silver, jewelry, and other similar valuables. The important point to remember in this connection is that care must be exercised not unduly to forbid markets for products manufactured in occupied territory, thereby throttling the industries which the military government is trying to build up. Of course, the importation or exportation of arms, ammunition, and other articles specially manufactured for war purposes, is always forbidden.

p. While the local civil courts should be continued in operation, it must be made clear that they will be without jurisdiction to try:

(1) Offenses committed by members of the occupying forces.
(2) Offenses committed by inhabitants of the occupied territory against members of the occupying forces.
(3) Violations by inhabitants of the occupied territory of the laws of war or of the rules and regulations prescribed by the military governor.

Offenses coming under (1) above would be tried by courts-martial; those under (2) and (3), though triable by courts-martial, should preferably be tried by provost courts and military commissions.

q. It is not believed that the usual elections should be permitted to be held in the Brown state during the unsettled period of the military occupation. The best policy would seem to be to require incumbents to continue in office until relieved, regardless of the terms for which elected or appointed.

r. (1) The handling of strikes in connection with public utilities and other activities which have taken on a military character is more or less an easy and simple matter. It is desirable, however, that strikes be kept down in other quarters as well, in order to reduce unemployment and consequent unrest to a minimum. After a strike has begun, that is, after the workmen have laid down their tools and walked out, adjustment is difficult. Prevention of strikes by adjustment before they occur is better. This may be accomplished by issuing orders directing the proper local officials to notify the local Officer in Charge of Civil Affairs whenever a strike appears to be imminent. This official,

thus notified, summons both parties to a conference, the summons usually being issued two or three days before the date set for the conference. The calling of such a conference especiallly pleases the employees. At the conference both parties are allowed to state their cases, the employees being permitted to state theirs first. This conference is intended primarily to show the Officer in Charge of Civil Affairs the extent and character of the dispute and whether it seems possible of settlement without a strike.

(2) After each side has stated its case, the Officer in Charge of Civil Affairs explains the position Blue will adopt in the matter, this being that the military authorities will remain neutral and not interfere unless their own interests are threatened. He explains further what the interests of the occupying forces are, and what the probable action would be in case of disorder following the strike. He then makes clear the impracticability of the Officers in Charge of Civil Affairs or other military men being able to act as arbitrators, they being relatively ignorant of such fundamental matters as transportation, normal cost of living, trade union precedents and regulations involved, etc., and that the wiser course would be for both parties to settle the dispute amicably between themselves rather than to trust settlement to representatives of a foreign army who are untrained for such duty and who would likely arrive at a settlement which would be unsatisfactory to both sides.

(3) Finally, the Officer in Charge of Civil Affairs asks both parties whether they do not think they can settle the matter without further participation by the occupying forces. An agreement is generally reached in conference. If not, the matter is usually dropped officially for several days, the Officer in Charge of Civil Affairs making it his business to call personally at the plant in order to see how matters are progressing, also, incidentally, to listen to voluntary individual statements from both parties to the dispute. If any agitators seem to be busy, their names are carefully noted and, if later investigation discloses that they are strangers in the locality, the hint is dropped that their

presence is no longer desired. The vagrancy courts can be used to punish agitators who are without visible means of support.

(4) By such method, both employers and employees are impressed with the fact that the military authorities are taking an active interest in seeing the dispute settled without resort to a strike. Of course, where the military forces are directly or indirectly involved, as where the army is the employer or is dependent upon the product of the strikers' labor, the strikes would be handled in the summary and more positive manner announced in the regulations.

s. The regulation with reference to complaints against Blue by Brown inhabitants is designed to prevent the compiling of *ex parte* or fictitious statistics for use either in molding international public opinion against Blue, or in offsetting claims or accusations by Blue as to the conduct of Brown inhabitants. The possibility of this is obviated by requiring complaints of such character to be made to the proper local civil officials, and then requiring such officials to report same to the military authorities without delay, or, if no such complaints were filed during the period of one week, to submit at the end of such period a signed statement to that effect. Investigations are promptly ordered as to each case complained of, and suitable disciplinary action is taken.

t. Another matter which deserves mention is that, as a general policy, the soldiers of occupying forces serving within the various districts should not be employed on duties which tend to belittle their dignity or lower their status in the opinion of the local civilian inhabitants. This applies especially to such work as the construction and maintenance of roads, which while necessary to the occupying forces, will also benefit directly or indirectly the inhabitants themselves. Under such circumstances, whenever practicable, local civilian labor will be employed under Blue supervision, but this supervision will not go to the extent of supplanting civilian road overseers or others who are in a position more efficiently to conduct the labor being performed.

u. Many other matters require careful consideration. For example, will fraternization tend toward the betterment of conditions? Will it promote good feeling and win Browns to the Blue side? Will prohibition of it weld Browns together and convince them that their leaders were right in siding with Red? Will the liquor traffic defeat fraternization restrictions? What will be the reaction to billeting in private dwellings? The answers to such questions will depend upon developments which can now be but dimly foreseen. Fraternization will grow as the transition from initial invasion to settled occupation takes place, and this probably should be recognized by the issuance of appropriate orders permitting it.

CHAPTER IV

Domestic Disturbances

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SECTION I

Radicalism

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1. HISTORICAL STATEMENT.—Organizations or societies to oppose organized government have existed continuously from the Middle Ages to the present day.

2. LEGAL ASPECTS.—In studying radical or revolutionary movements looking to the modification or overthrow of existing government or advocating marked changes in industrial conditions, it should be borne in mind that these movements are not necessarily criminal. The United States Government is a representative one, is vested in the people, and if the people see fit to modify it, or to change the industrial situation with respect to employers and employees, they have the right to do so, *provided* they use proper and lawful means in so doing. The Constitution of the United States is not exempt from attack. It has been amended repeatedly as the result of constructive criticism.

Federal laws have repeatedly been modified or entirely repealed. The Government may be proceeded against by the people so long as they proceed in an orderly manner through the ballot or through their legally elected representatives. But they may not use violence or advocate its use. The Constitution, so long as it remains in effect, is the supreme law of the land, and, together with the federal statutes written in accordance therewith, must remain inviolate until modified or changed in the manner that the people themselves have prescribed.

b. Radical organizations are divided into two broad classes, political and industrial. The former seek to influence the government by obtaining control of its political machinery, the latter by obtaining control of industry. Certain of the so-called radical organizations within the United States profess to adhere to the ballot as their weapon of attack, and many of their members loyally supported our Government in its prosecution of the World War; but they are nevertheless associated with the ultra-radical element in such way as to constitute a menace.

c. Those ultra-radical organizations, both political and industrial, which advocate the use of force and violence to overthrow the existing government, or the taking away of private property from one class without due process of law and giving it to another, must be classed as illegal, not because the *ends* sought are necessarily improper, but because the *means* to be employed are repugnant to the Constitution and laws of the United States.

SECTION II

Instances of Use of Federal Troops in Domestic Disturbances

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3. IN GENERAL.—From the adoption of the Constitution to the present time, federal troops have been used in the suppression of domestic disturbances on more than a hundred separate occasions. Scarcely had the Constitution been adopted and an act passed authorizing the President to call out the militia when necessary to enforce the laws, when it became necessary for the President himself to head a military force to put down the Whiskey Rebellion. Many occasions for the use of the militia arose prior to 1808, during which year the President was authorized to use the land and naval forces of the United States in those cases where it was lawful for him to use the militia. Frequent occasions for the employment of the federal forces continued to arise thereafter, but it is neither necessary nor practicable to review them all. An examination of a few well selected cases will be sufficient to show the development that has taken place and to indicate the present policy of our Government.

4. THE DORR REBELLION.—*a.* The Dorr Rebellion, which occurred in Rhode Island in 1842, gave rise to the celebrated case of Luther *vs.* Borden (7 Howard, 1), in which the Supreme Court of the United States handed down several decisions that have gone far to shape the policy of our Government in cases of domestic civil disturbances.

b. Many people in Rhode Island were dissatisfied with the government as regulated by the charter granted by

Charles II in 1663. Attempts to secure reform having failed, a mass meeting was held in Providence in July, 1841, at which the assembling of a constitutional convention was authorized. This convention assembled and drafted a constitution which was submitted to popular vote in December, 1841, and it was claimed that a majority of the male population of voting age ratified it. In the meantime the "Charter Party," the adherents to the old order of things, had held a convention and submitted to popular vote a constitution which was rejected. In April, 1842, the opponents of the "Charter Party" called a general election under the new constitution which had been adopted. The election was held and a full board of officers was chosen, one of whom, Thomas Dorr, was named governor. The new government organized. About this time the "Charter Party" called upon the President of the United States for aid, but received the reply that, since no actual force had been used by the new government, he believed the danger to be overestimated.

c. On the 18th of May, a body of men under Dorr assembled at Providence and attempted to seize the State arsenal, but this force dispersed upon the approach of Governor King with a party of militia. Dorr now left the State, and set about organizing an armed force for the purpose of moving against the then existing government of Rhode Island. When Governor King learned of Dorr's intentions, he again appealed to the President, who informed him that measures had been taken to ascertain the extent of the danger confronting the State government and that, if it was found that aid was necessary, it would be rendered in the manner prescribed by law. On June 23d, Dorr appeared within about ten miles of Providence with a force of about 1000 armed men. Governor King reported the condition of affairs to the President and again asked for troops, but President Tyler invited his attention to the fact that the legislature of Rhode Island was at that time in session and, therefore, that the Governor did not have authority to request aid, that being the function of the legislature when that body was in session or could be convened in time. On

June 25th, the Rhode Island Legislature declared martial law and made provision for calling out about 3000 militia. This is believed to be the only instance in our history of a declaration of martial law by a legislature.

d. In the meantime, it was represented that the earlier call of the Governor had been made in pursuance of the direction of the Legislature and, the present meeting of the Legislature being merely an adjourned one, the State, therefore, had complied with the law. President Tyler, who was keeping himself personally informed as to affairs in Rhode Island, sent the Secretary of War there on June 29th with instructions to honor any requisition that the Governor might make for troops and, if necessary, to call on the Governors of Massachusetts and Connecticut for such additional militia as might be needed to put down the rebellion. The Secretary carried with him a proclamation signed by President Tyler, which proclamation he was to release if circumstances warranted. There was no occasion for issuing it because Dorr's forces did not reassemble.

e. Later, Dorr returned to the State, was tried on a charge of high treason, convicted, and sentenced to imprisonment for life.

f. The case reached the Supreme Court of the United States through consideration of the act of the lower courts in which an action for trespass was brought by one Martin Luther, one of Dorr's adherents, against Luther M. Borden, a militiaman, who at the command of his captain had broken and entered Luther's house for the purpose of searching for and arresting Luther, who, it was believed, was concealed in the house. The decision of the court will be referred to later.

5. Disturbances in Kansas, 1854-58.—*a.* The act of May 31, 1854, providing for the erection in the mid-continent of two immense territories, Nebraska and Kansas, and permitting the inhabitants of these territories to decide for themselves whether slavery should or should not exist within their limits, was the occasion for a political struggle which forms a very interesting chapter in our history.

b. Almost immediately after the passage of the act, emigrants began to move to those territories from both slave and anti-slave states, and the time soon came when the inhabitants had to align themselves on one side or the other of the slavery question.

c. In October, 1854, A. H. Reeder, who had been appointed governor of Kansas, arrived at Fort Leavenworth and took steps to organize a territorial government. An election, held in March, 1855, disclosed a large pro-slavery majority. Conflicts between the governor and the territorial legislature arose, and culminated in his attempt to move the seat of government to an obscure settlement on the Fort Riley reservation. Reeder was thereupon removed from office and Wilson Shannon of Ohio was appointed governor.

d. Shortly after the arrival of Shannon, the anti-slavery citizens assembled in convention, framed a constitution making Kansas a free-labor state, and on this demanded admission into the Union. In November, 1855, Governor Shannon reported to the President that he was satisfied that a secret military organization had been formed having for its object a forcible resistance to the laws; that prisoners were being forcibly taken from the sheriffs; that cattle were being killed; that property was being destroyed; that women and children were being driven out of the territory; that he had directed that all available militia be sent to the assistance of the sheriff, and that he must have federal troops to avoid bloodshed.

e. President Pierce at once replied that all the power vested in the Federal Executive would be used to preserve order and enforce the laws, and that measures would be taken to call out the troops. A week later Governor Shannon sent a copy of this reply to Colonel Sumner, then commanding at Fort Leavenworth. Colonel Sumner declined to send troops until he had received direct orders to do so.

f. Before the end of January, 1856, the situation had become acute. The President was advised that a force of armed men, with several pieces of artillery, was about to enter Kansas from Missouri with the avowed intention of

burning the towns occupied by members of the Free-labor Party, and that the latter were arming to offer resistance. The President thereupon issued a proclamation reciting the conditions, ordering the dispersion of all those opposing the execution of the laws of the territory, calling upon all good citizens to render obedience to the laws, etc.

g. At the same time, instructions were sent to the military commanders at Forts Leavenworth and Riley to honor the requisition of Governor Shannon for troops. The following is an interesting extract from the instructions of the Secretary of War:

> "In executing this delicate function of the military power of the United States, you will exercise much caution to avoid, if possible, collision with insurgent citizens, and will endeavor to suppress resistance to the laws and constituted authorities by that moral force which, happily, in our country is ordinarily sufficient to secure respect to the laws of the land and the regularly constituted authorities of the government. You will use a sound discretion as to the moment at which the further employment of the military force may be discontinued, and avail yourself of the first opportunity to return your command to the more grateful and prouder service of the soldier, that of common defense."

h. Kansas was the scene of numerous disturbances during the next several years. The commanding officers at Forts Leavenworth and Riley were instructed to furnish troops upon request of the Governor, and frequent calls were made, but so far as the records show, it never became necessary for the federal troops to resort to force against the insurgents.

6. Labor Strikes of 1877.—*a.* The labor strikes of 1877 brought about an interesting situation. The action of the railroad companies in the summer of 1877, in suddenly declaring a reduction of ten percent in the wages of their employees, was the occasion for a serious conflict between employers and employees. In order to respond to calls for aid in localities where acts of violence had already occurred, and to be ready for action in localities where danger threatened, it became necessary to concentrate federal troops in six states, also to move up others in readiness for anticipated calls, so that within sixty days nearly one-half of the army was in motion or under orders to be ready to move on short notice.

b. The trouble commenced on the 14th of July on the Baltimore and Ohio Railroad, where some forty brakemen and firemen stopped work and attempted to prevent the movement of freight trains. On the 16th, the crews on freight trains at Martinsburg, West Virginia, refused to work and drove off men sent to replace them. The police of Martinsburg were powerless to cope with the situation, and a body of State militia, sent to that point on the morning of the 17th, was fired upon and driven back. By this time the strikers, whose numbers had increased to more than a hundred, had been joined by several hundred outsiders. By nightfall the road was effectually blocked at Martinsburg and the strike had spread to Parkersburg and Wheeling. By the morning of the 18th, the whole road was in the hands of the strikers, and the governor, perceiving the hopelessness of contending with the situation with his slender militia force, called for aid from the National Government. In his request he recited the conditions that existed and the fact that the legislature was not in session and could not be convened in time to take action.

c. The commanding officers at Washington Arsenal and at Fort McHenry were ordered to proceed to the scene at once. They were informed that a proclamation was about to be issued and likely would be issued by the time of their arrival. They were cautioned, however, that, until the proclamation had actually been issued, they were to take no action beyond going to the scene of the disturbance.

d. The President's proclamation was released on July 18th. It recited that a state of domestic violence existed; that the Constitution of the United States guaranteed protection to every State against domestic violence; that the laws of the United States authorized the State Executive to call upon the Federal Executive for aid; that such request had been made; that the President was required by law to issue a proclamation calling on insurgents to disperse; that the President was making such proclamation and did call on insurgents to disperse; and that the aid of all good citizens was invoked.

e. Colonel French reported at Martinsburg early the morning of the 19th and issued a printed notice, supplementing the proclamation of the President, in which he warned all persons engaged in interrupting travel on the Baltimore and Ohio Railroad, that the troops of the United States must not be impeded, and that whoever undertook to impede them did so at his peril. In the course of the day, the block at Martinsburg was untangled and several trains were sent out under military escort. On this day, however, the strike extended to the entire line.

f. The strike spread to Baltimore, where there were extensive shops and round-houses. Fearing the destruction of these, the Governor of Maryland ordered out a militia regiment, the appearance of which was a signal for an uprising in which the militia was stoned and the mob fired into. Another regiment was called out and was attacked by the mob. In the meantime the railroad station was set on fire. The Governor, concluding that the situation was beyond State control, called on the President for aid. The Secretary of War replied that the President would aid to the extent of his power. Shortly thereafter federal troops were sent to Baltimore, and General Hancock was ordered there to take charge.

g. When the strike later spread to Philadelphia, General Hancock was ordered to that place to take charge of military operations. The Governor of Pennsylvania made the usual request for aid, the customary proclamation was issued, and troops were sent. A new situation then arose which marks an important step in the development of our national policy. In the cases of West Virginia and Maryland, the President had been careful to order that the troops should report to the Governor and act under his direction. General Hancock had been instructed to pursue a similar course in Pennsylvania, but, upon reflection, President Hayes was inclined to think that when a state had exhausted all its resources and had appealed to the President for aid, the state thereby confessed defeat and admitted its inability to cope with the situation, and that the Federal Government should therefore assume direction

of subsequent affairs, for the reason that, by responding to the appeal of the state, the Federal Government had accepted the responsibility and would be held accountable for the consequences. In this view of the case, and under the circumstances known to exist in Pennsylvania, the President thought that General Hancock should take command of all troops, militia as well as regulars, engaged in the suppression of violence in the State. General Hancock held this view also but reported to the War Department that the Governor believed he could maintain the supremacy of the law, and recommended that the Governor be given an opportunity to do so before the federal commander assumed full charge. Accordingly, the troops were ordered to act in cooperation with the State forces. The disturbances were quelled without a further raising of the question of control.

h. In the meantime the strike spread to Ohio and Indiana. On July 25th, 1877, the judge of the United States Court at Indianapolis advised the President that the Indiana state authorities were doing nothing and that the mob was for the time being the only power in the state, and recommended that an officer of high rank be sent there. A few days later the Governor of Indiana, finding the capitol surrounded by a reckless mob bent upon destroying property, called on the commandant of the United States arsenal at Indianapolis for assistance. The latter referred him to Washington.

The Governor's request, which differed from those we have considered heretofore, was as follows:

> "In view of the threatened domestic violence growing out of the railroad strike, I request that authority be at once given to the commandant of the arsenal to render me all the aid possible in preserving public peace."

The Secretary of War replied:

> "I am directed by the President to say that in the absence of a call upon him under the Constitution and statutes for military aid in suppressing domestic violence, the Federal trops can only be sent in protecting property of the United States and enforcing processes of the Federal Courts."

i. Troops were sent to several points in Indiana, where their presence seems to have had the desired effect. They did not come into actual conflict with the mob.

j. The strike now spread to Chicago, where a battle occurred between the rioters and the militia. The Governor made the usual request and federal troops were sent, but the military commander was allowed to use his own discretion as to whether or not the troops should be placed under the orders of the Governor. The next day the military commander was instructed to use his troops only in protecting public property and to report if conditions arose which seemed to require other use of them.

k. Similar situations arose in Missouri a few days later. It is to be noted that in those cases where the State Executives had used their available resources before calling on the Federal Executive, aid was given promptly. In those States where governors had not used their available resources, the aid was confined to placing federal troops within the State with orders to protect United States property and enforce the processes of United States courts.

7. Railroad Strike in Chicago in 1894.—*a.* A situation different from any of the foregoing arose in Illinois in connection with the railroad strike of 1894. Here troops were ordered to Chicago upon representation made by officers of the United States courts that they were unable to enforce the judicial processes of those courts. The Governor of Illinois not only did not request federal aid, but protested sharply against the presence of United States troops and asked that they be withdrawn. The State authorities were not controlling the situation so far as the destruction of railroads and interference with interstate commerce was concerned. Strikers burned a large number of freight cars, destroyed freight, tore up railroad tracks, and otherwise interfered with the running of the trains. Federal troops were therefore sent into the localities from which they could best protect railroad property.

b. To the Governor's protest against the sending of federal forces to Chicago, President Cleveland replied:

> "Federal troops were sent to Chicago in strict accordance with the Constitution and laws of the United States, upon the demand of the Post Office Department that the obstruction to the mails should be removed, and upon the representation of the judicial officers of the United States Courts that the processes

of such courts could not be enforced through the ordinary means, and upon competent proof that conspiracies existed against commerce between the States. To meet these conditions, which are clearly within the province of the Federal authority, the presence of Federal troops in the city of Chicago was deemed not only proper, but necessary, and there has been no intention of thereby interfering with the plain duty of the local authorities to preserve the peace of the city."

A proclamation was issued, which recited, among other things:

"And whereas, for the purpose of enforcing the faithful execution of the laws of the United States and protecting its property and removing obstructions to the United States mail in the City and State aforesaid, the President has employed a part of the military forces of the United States. . . . . Troops employed against such a riotous mob will act with all the moderation and forbearance consistent with the accomplishment of the desired end, but the stern necessities that confront them will not permit with certainty discrimination between guilty participants and those who are mingled with them from curiosity and without criminal intent. The only safe course, therefore, for those not actually unlawfully participating, is to abide at their homes, or at least not to be found in the neighborhood of riotous assemblages.

"While there will be no hesitation or vacillation in the decisive treatment of the guilty, this warning is especially intended to save and protect the innocent."

c. In the main, so far as the United States troops were concerned, the strike came to an end quietly. It was necessary for one company of federal troops to fire into a mob. Several soldiers were killed by the explosion of ammunition in a limber chest.

d. If this disturbance had been one in which the rioters were not interfering with the execution of the laws of the United States, or with the execution of processes of United States courts, or with the transportation of the mail, or with interstate commerce, or with property of the United States, or with other instrumentalities or functions of the Federal Government, troops could not have been used legally without a request from the authorities of the State.

8. USE OF FEDERAL TROOPS IN SAN FRANCISCO, IN 1906.—*a.* On the morning of April 18, 1906, an earthquake, with fire and other disasters following, brought about a situation in San Francisco which differed from any that had theretofore occurred in our history. At this time General

Funston, commanding the Department of California, was temporarily in command of the Pacific Division in which the Department was located.

b. Early in the morning of this day, General Funston, seeing that fires were breaking out in the downtown district and that firemen were quite helpless because of the breaking of the water mains, realized that disorder would occur and decided to order out all available troops to report to the mayor. Federal troops were brought in from stations all along the Pacific coast. The Pacific Fleet and the California National Guard cooperated.

c. The first detachment of troops to arrive reported to the chief of police and was assigned by him to guard the banks and to patrol Market Street to prevent looting. Especially were these patrols to prevent breaking into saloons, which had been ordered closed. The next contingent of troops to arrive was assigned the duty of guarding the mint, the post office, and the county jail, and of keeping people back from the fires. As more troops arrived, they were put on duty assisting the firemen in handling hose and in patrolling the streets. Orders were given that soldiers would shoot any person found looting.

d. It soon became evident that, handicapped as they were by lack of water, the firemen would not be able to prevent the spread of the fire. Upon request of the fire chief, General Funston ordered the Ordnance Department to supply such explosives as were available and at the same time he detailed two officers to take charge, under direction of the mayor and the fire chief, of the destruction of buildings necessary to prevent the spread of the conflagration.

e. In the afternoon General Funston telegraphed the War Department that he was using troops to assist in fighting the fire, aiding the police, and saving property, and that he trusted the War Department would authorize any action he found necessary to take.

f. In the evening of the first day, by agreement with the mayor and the chief of police, the city was divided into sections so that the responsibility for guarding it might be fixed. Federal troops were assigned one section, and a

number were also directed to assist the police and the fire departments.

g. General Funston saw that soon there would be a large number of people without food and shelter and that it would devolve upon the army to meet the situation. He estimated the number that would have to be cared for, estimated the quantity of army stores that would remain after the warehouses already threatened were destroyed, and telegraphed the War Department for enough food, tentage, and bedding to make up the deficiency.

h. The National Guard had been called out and, with the Regular troops and police, were scattered indiscriminately over the city. General Funston held a conference with the mayor, the chief of police, and the National Guard commander, at which it was agreed to divide the city into districts, one under the control of the federal troops, including the navy contingent, another under the National Guard, and a third under the municipal police. The district assigned to federal troops contained about half the population of the city, the banking and commercial houses, and the post office and sub-treasury buildings.

i. General Funston then divided his district into six sub-districts and assigned a commander and a force of troops to each. It became necessary to issue stringent orders at first, but as soon as conditions warranted it these restrictions were relaxed.

j. Four days after the beginning of the fire, General Greely, the Division Commander, returned and assumed command of the Pacific Division. The following quotation from his report sets forth clearly his conception of the relations between the civil and the military:

> "Recognizing that, apart from its protection of Federal buildings the army was in the performance of non-military duties, my instructions and directions all tended to its complete subordination to the civil power and to urgent public needs, from which policy the slightest deviation was never sanctioned.
>
> "In treating the army as an adjunct to the civil authorities, instructions were issued immediately to remove all military restrictions on the movement of peaceful individuals, and the military pass system was immediately abolished. It was im-

pressed upon officers and men that the force was in the nature of a posse comitatus for the maintenance of public order, and that consequently the proclamations and municipal orders of the mayor should be observed strictly."

k. Doubtless this was not a difficult matter since, in all probability, the mayor did not issue any orders which did not have the approval of the Commanding General.

l. Authority was given the military to arrest persons guilty of personal assaults, robbery, looting, or other serious offenses and persons so arrested were promptly turned over to the civil authorities.

m. From time to time, the Commanding General signed with the mayor, at the latter's request, proclamations on matters of public importance where it was thought that the moral force of federal authority would strengthen the proclamations.

n. The Division Commander's report contains the following:

"From the first I fully realized the importance of exact comprehensive information as to the march of events, the trend of opinion, and particularly as to the movements and physical conditions and needs of the homeless destitutes. A system was organized under the Inspector General, in which the city was divided into districts. Trained inspectors, traversing them daily, verbally spread the situation before me each evening."

o. These reports constituted the basis for action in establishing the relief measures required.

p. With reference to the part the army took in the establishment of relief stations and the performance of the many other duties that devolved upon it, it is sufficient to state that the army did whatever reasonably fell to its lot, always having in mind the idea that it was subordinate to the civil power, and exercised only the functions that the civil power was unable to exercise at the time.

9. DISTURBANCES OF 1919-1920.—In the latter part of 1919 and the early part of 1920, several situations arose in different parts of the United States where it became necessary to request the presence of federal troops to aid in quelling riots and protecting property. In some cases the National Guard units had been mustered into federal ser-

vice for the war and new units had not yet been formed. The states were therefore practically without military forces of any kind. Since these occurrences took place while the United States was still technically at war, the manner in which they were handled does not, in many respects, constitute a suitable guide for handling similar disturbances which occur in time of peace.

10. DISTURBANCES IN WEST VIRGINIA, 1921.—*a.* During the summer of 1921, mining disturbances broke out in West Virginia and spread rapidly over a number of counties. The Governor of the State, being unable to handle the situation with the State forces, called upon the President for federal assistance. An Army officer was sent to the scene of the disturbance and reported the situation to Washington by telegram as follows:

> "Went over situation with * * * representing Fifth Corps Area who reported that the unruly element had its advance guard within twelve miles of Logan County and that about seven hundred men had gathered at Sharples continuing same line of conduct as indicated in Governor Morgans telegram to Sec War period Saw the Governor at four AM and he repeated in substance his telegraphic statements adding that he considered the situation beyond the control of the State authorities and that the lawless force now numbered five thousand at a conservative estimate period Promptly after arrival I sent for * * * President of District Seventeen period He reported at four fifty five accompanied by * * * his Secretary-Treasurer and * * * the Attorney for the Union period I told this gentleman briefly that a crisis had now arisen in the state of affairs, that they as leaders must be considered responsible to a great extent for the present situation and that in any event I should be reluctantly obliged to hold them responsible in case it might become necessary to resort to the drastic extreme required by my instructions period I suggested that they take immediate steps to stop the march of the so-called insurgents and oblige them to return to their homes period * * * immediately telephoned to their representatives at Racine to hold everybody until * * * and he arrived period They left me at five thirty promising to proceed direct to the scene of trouble and to do their utmost to end matters period They will report to me by telephone period Reports of the numbers of the insurgents are undoubtedly exaggerated but the situation is acute period Am convinced that leaders above mentioned can end matters if they make an earnest effort and they gave every indication of sincerity period In the meantime it is requested that preparations for the sending of troops be continued so that there will be no delay in case they are called for period In this connection it should be noted that encounters with law breakers will probably take place in the country and not in the cities and that the use of gas if

decided upon would therefore be at long range period * * * will communicate direct with Corps Area Headquarters as to proportion of machine guns, one pounders and kind of transportation period I shall not report personally to Corps Area Commander until it is decided to send troops period This is in conformity with my letter of instructions period Address me care Governor Morgan, Charleston W period Va period

b. The ensuing proclamation of the President was as follows:

"WHEREAS, the Governor of the State of West Virginia has represented that domestic violence exists in said State which the authorities of said State are unable to suppress, and

"WHEREAS, it is provided in the Constitution of the United States that the United States shall protect each State in this Union, on application of the legislature, or of the executive when the legislature can not be convened, against domestic violence, and

"WHEREAS, by the law of the United States in pursuance of the above it is provided that in all cases of insurrection in any State or of obstruction of the laws thereof it shall be lawful for the President of the United States on application of the legislature of such State or of the executive when the legislature cannot be convened to call forth the militia of any other State or States or to employ such part of the land and naval forces of the United States as shall be judged necessary for the purpose of suppressing such insurrection and causing the laws to be duly executed; and

"WHEREAS, the legislature of the State of West Virginia is not now in session and cannot be convened in time to meet the present emergency, and the Executive of said State under Section 4 of Article IV of the Constitution of the United States and the laws passed in pursuance thereof, has made due application to me in the premises for such part of the military forces of the United States as may be necessary and adequate to protect the State of West Virginia and the citizens thereof against domestic violence and to enforce the due execution of the laws; and

"WHEREAS, it is required that whenever it may be necessary, in the judgment of the President, to use the military forces of the United States for the purposes aforesaid he shall forthwith by proclamation command such insurgents to disperse and retire peaceably to their respective homes within a limited time;

"NOW THEREFORE, I, WARREN G. HARDING, President of the United States, do hereby make proclamation and I do hereby command all persons engaged in said unlawful and insurrectionary proceedings to disperse and retire peaceably to their respective abodes on or before 12 o'clock noon of the * * * day of August, instant, and hereafter abandon said combinations and submit themselves to the laws and constituted authorities of said State;

"And I invoke the aid and cooperation of all good citizens thereof to uphold the laws and preserve the public peace.

"IN WITNESS WHEREOF, I have herewith set my hand and caused the seal of the United States to be affixed.

"Done at the city of Washington, the * * * day of August, in the year of our Lord one thousand nine hundred and twenty one, and of the Independence of the United States the one hundred and forty-sixth."

c. The following letter of instructions from the War Department to the officer in charge is both interesting and instructive:

"Copies of the President's proclamation and orders covering your movements have been sent to you. Your primary object is to suppress domestic violence and to establish and maintain order in the disturbed areas. You will cause to be obeyed the command of the proclamation that all persons engaged in unlawful and insurrectionary proceedings disperse and retire to their abodes and thereafter submit to the laws and constituted authorities of the State. You will make such dispensations as shall appear proper with respect to those who commit or may be about to commit physical violence. Any conduct on the part of any person, group or association whatever which in your judgment is contributory to or likely to be productive of domestic violence or the continuance of disorder, where such conduct is apparently lawful and would not be interfered with under normal conditions, will be immediately communicated to the War Department and you will await specific instructions unless the emergency is so grave as to necessitate a departure from that course. You will act throughout with the greatest discretion and caution not to incite what it is your mission to allay and prevent. In achieving your object, necessity is the measure of your authority. You will always countenance and support the civil officers in executing their laws and if necessary and required by them, you will protect and support and aid them in the execution of their duties. The civil functions and processes of the State will not be interfered with nor superseded if exercised effectually in the suppression of violence and the restoration of order. Persons arrested should either be admonished and sent home or if detained they should be delivered to the State authorities as soon as practicable. Where that course results in the release and return to scenes of disorder of persons whose presence there impedes the accomplishment of your purpose such persons may be retained in the military custody so long as the necessity exists. Persons in the military custody will be held by authority of the United States and with respect to writ of habeas corpus the directions of sections 477, 478, and 479, Court Martial Manual, will be followed, reporting each such case by telegraph direct to The Adjutant General of the Army."

SECTION III

When Federal Troops May be Employed

Paragraph

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11. CLASSES OF EMERGENCIES REQUIRING FEDERAL AID.—Emergencies requiring federal aid are known as "minor emergencies" and "major emergencies." The former may be defined as localized disturbances in which the Regular forces are adequate to meet the situation; the latter may be defined as general disturbances, developing from a series of minor emergencies, in which the Regular forces are inadequate to meet the situation.

12. PRINCIPLES GOVERNING THE EMPLOYMENT OF FEDERAL TROOPS.—The broad general principle governing the employment of our federal forces in time of stress may be succinctly stated as follows:

a. The Regular Army component is regarded as available and sufficient to meet minor emergencies without disturbing the social and industrial life of the country.

b. The Regular Army and the National Guard components are regarded as sufficient to meet major emergencies, not involving the maximum effort, with a minimum disturbance of the social and industrial life of the country.

c. In a national emergency involving the maximum effort, the Regular Army component would be available for prompt initial deployment, to be reinforced later by the National Guard component, thus permitting the mobilization and additional training of the Organized Reserve com-

ponent to proceed in an orderly and effective manner which should make it available for early deployment.

d. Each component or increment can be employed separately or collectively, according to the requirements of the situation or war plan, subject to the following limitations:

(1) When the National Guard is *called* into the service of the United States, it may be employed only in suppressing insurrection or repelling invasion, and may not be employed beyond the territorial limits of the United States. This last clause is to be construed rather liberally, however, so far as repelling an invasion is concerned. (See 29 Op. Atty. Gen. 324.)

(2) When the National Guard is *drafted* into the service of the United States under the provisions of Section 111 of the National Defense Act, as amended by the act approved June 4, 1920, it may be employed in all respects and places that the Regular Army may be employed, and the same is true of increments of the unorganized militia inducted into the federal service by means of the draft.

13. ORDINARY SITUATIONS DISTINGUISHED FROM MARTIAL LAW.—*a.* Whenever the Army of the United States is employed in the suppression of internal disorders, it is either employed under some statutory authority as found in the Constitution and acts of Congress, or it is employed without any statutory sanction whatever. This distinction is important, for in the latter case the troops would not be operating under the law of the land but under the unwritten *law of necessity*, to which we give the name *martial law*. The subject of martial law is more fully discussed elsewhere in this text. (See Chapter V.) It is adverted to here only for the purpose of pointing out that we are to set it aside for the present and emphasize the suppression of internal disorders by means of the federal military forces employed in the manner prescribed by or pursuant to statute.

b. The paragraphs which follow set out briefly those regulations and statutes which apply to the ordinary cases in which federal troops may be used in quelling domestic disturbances.

14. ARMY REGULATIONS.—For a long time the Army Regulations (now AR 500-50, originally G. O. No. 49, Headquarters of the Army, July 7, 1878, published soon after the passage of the Posse Comitatus Act, quoted in the next paragraph below, and republished from time to time thereafter) have set forth very clearly the occasions when Congress has expressly authorized the use of the federal military forces for the purpose stated. These regulations, with certain exceptions (see par. 18, below), are merely extracts from federal statutes.

15. THE POSSE COMITATUS ACT.—*a.* Section 15 of the Act of June 18, 1878 (20 Stat. 152), known as the "Posse Comitatus Act," provides as follows:

> "From and after the passage of this act it shall not be lawful to employ any part of the Army of the United States, as a posse comitatus, or otherwise, for the purpose of executing the laws, except in such cases and under such circumstances as such employment of said force may be expressly authorized by the Constitution or by Act of Congress; * * * and any person wilfully violating the provisions of this section shall be deemed guilty of a misdemeanor and on conviction thereof shall be punished by fine not exceeding ten thousand dollars or imprisonment not exceeding two years or by both such fine and imprisonment."

This act was suspended as to Alaska by the Act of June 6, 1900 (31 Stat. 330). See also paragraph 20 below as to Hawaii, Porto Rico, and the Philippines.

b. Posse comitatus is a term used to denote the power of the county. The sheriff, or other peace officer, has authority by the common law, while acting under the authority of the writ of the United States, commonwealth, or people, as the case may be, and for the purpose of preserving the public peace, to call the posse comitatus to his aid.

c. From the statute above quoted, it is seen that it is unlawful to use the Army of the United States for the purpose of executing the laws, except in such cases and under such circumstances as may be expressly authorized by the Constitution of the United States or by Act of Congress. We must, therefore, look to those sources to see what we may lawfully do.

16. THE CONSTITUTION.—*a.* It is provided in Article I, Section 8, of the Constitution of the United States that

Congress shall have power to raise and support armies, provide and maintain a navy, make rules for the government and regulation of the land and naval forces, and to provide for calling forth the militia to execute the laws of the Union, suppress insurrections, and repel invasions.

b. Article II, Sections 2 and 3, provides that the President shall be Commander-in-Chief of the army and navy of the United States, and of the militia of the several states when called into the service of the United States, and that he shall take care that the laws are faithfully executed.

c. Article IV, Section 8, makes provision that the United States shall

> (1) Guarantee to every state in this Union a republican form of government,
> (2) Protect each of them against invasion, and
> (3) Protect each of them against domestic violence (on application of the legislature, or of the executive when the legislature cannot be convened).

d. By the term "republican form of government" is meant a government by representatives chosen by the people. It may be assumed that, at the time each State was admitted to the Union, its government was regarded as republican in form and therefore embodied the principles to be upheld. The Constitution of the United States and those of the several States provide regular modes of changing or amending those constitutions, and the guarantee given to the States is that they shall be protected against attempts to change their constitutions except in the regularly prescribed manner, which is in accordance with the wishes of the governed.

e. "Domestic violence" is not necessarily war. In fact, so far as the Federal Government is concerned, it is seldom such a situation as even to call for the exercise of martial law.

17. OTHER FEDERAL STATUTES.—*a.* The following *Acts of Congress* (found under the title "Insurrection" in Sections 5297, 5298, and 5300 of the Revised Statutes of the United States) are the principal ones to be considered:

> "5297. In case of insurrection in any State against the government thereof, it shall be lawful for the President, on application of the legislature of such State, or of the Executive, when

the legislature can not be convened, to call forth such number of the militia of any other State or States, which may be applied for, as he deems sufficient to suppress such insurrection; or, on like application, to employ for the same purposes, such part of the land or naval forces of the United States as he deems necessary."*

"5298. Whenever, by reason of unlawful obstructions, combinations or assemblages of persons, or rebellion against the authority of the United States, it shall become impracticable, in the judgment of the President, to enforce, by the ordinary course of judicial proceedings, the laws of the United States within any State or Territory, it shall be lawful for the President to call forth the militia of any or all of the States, and to employ such parts of the land or naval forces of the United States as he may deem necessary to enforce the faithful execution of the laws of the United States, or to suppress such rebellion, in whatever State or Territory thereof the laws of the United States may be forcibly opposed, or the execution thereof forcibly obstructed."

"5300. Whenever, in the judgment of the President, it becomes necessary to use the military forces under this title, the President shall forthwith, by proclamation, command the insurgents to disperse and retire peaceably to their respective abodes, within a limited time."

b. It will be observed that the statute first above quoted refers to the obstruction of the civil authority of a *State,* and the second to obstruction of the civil authority of the *United States.* Military force is invoked in the one case to uphold the civil authorities of the State, and in the other to uphold the civil authorities of the United States—*civil authorities* in either case. A proclamation as required by Section 5300 is necessary before the military may be used under either Section 5297 or Section 5298.

c. This proclamation is not, as is sometimes supposed a proclamation "declaring martial law." In fact, it is believed that there has never been a single instance in our history, except as an incident of actual war, where the Federal Government or any representative of it has ever declared martial law. It is frequently declared by the *States,* but not by the central government which is peculiar in that

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*The language, "of any other State or States" presumes that, when occasion arises, the militia of the particular State will be brought into action by its *own* executive and legislative authority (Luther *vs.* Borden, 7 How. 1; 8 Op. Atty. Gen. 8).

Congress has since empowered the President to call forth *any* of the militia for the purposes stated in this Statute (Act of June 21, 1903 [32 Stat. 776] as amended by the Act of May 27, 1908 [35 Stat. 400]). With reference to the expression, "which may be applied for," it is not the practice of the States to call for any particular militia, but to leave this entirely to the discretion of the President.

its principal powers are delegated to it by the people, such powers as have not been so delegated being retained by the States themselves.

d. The protection sought, whether by State or Federal civil authorities, is afforded by the President ordering a sufficient military force to the disturbed locality with the proper instructions for the repression of the existing violence. No military commander inferior to the President can assume to initiate such orders, except in cases of sudden uprising or disturbance later to be considered. When employed to support the civil authorities of a State, the troops remain United States troops, representing the sovereignty of the United States, and can act only under command and direction of the President and their own officers. They cannot be placed under the command of a governor or any other State official, civil or military. As their purpose, however, is to aid in the execution of the laws and of restoration of the peace of the State, their action should, in general, as far as practicable, be in concert with the action or views of the duly constituted civil authorities.

e. While the troops should of course move and operate with promptitude and efficiency, no more military power than is reasonably required should be resorted to, nor should the disorderly element be treated like an enemy in war unless the emergency is such as to demand extreme measures. Usually a display of force and the issuance of the necessary instructions will be sufficient, without resort to arms, to accomplish everything desired.

18. SUDDEN EMERGENCIES.—*a.* The question arises as to what should be done in case of sudden riot or other situation which will not admit of delay. Should the uprising be against the United States, the right of self-defense is inherent in every government, is essential to its existence, and is recognized by the courts. This is not expressly covered by the Constitution or by any statute, but is partially covered by regulations (A.R. 500-50) as follows:

> "5. *Applications for troops.*—*a.* Applications for troops to aid the civil authorities should originate with the civil authorities concerned, who should forward them for the consideration and action of the President.

"In case an application for troops is made by civil authorities to a local commander, such commander, whenever time will admit, must forward the application to the War Department, with statements of all material facts, for the consideration and action of the President.

"*b.* In case of sudden and unexpected invasion, insurrection, or riot, endangering the public property of the United States, or in case of attempted or threatened robbery or interruption of the United States mails, or other equivalent emergency so imminent as to render it dangerous to await instructions requested through the speediest means of communication, an officer of the Army may take such action before the receipt of instructions as the circumstances of the case and the laws under which he is acting may justify, and will promptly report his action and the circumstances requiring it to The Adjutant General, by telegraph, if possible, for the information of the President."

b. This makes provision for handling sudden emergencies so far as the *United States* is concerned, but how about going to the assistance of a *State* in similar cases? Here the military commander will have to exercise good judgment, for there is neither a statute nor a regulation covering the case, but there is a statute (the Posse Comitatus Act) prescribing a heavy penalty for rendering assistance improperly. Such a situation would not be unlike flood, fire, and earthquake situations (see Special Regulations No. 67, W.D., 1917) which have arisen, the best example of which is probably the San Francisco earthquake and fire of 1906. The action of the troops on that occasion has received universal commendation. Had they remained at their military stations and done nothing, as they might have done in strict compliance with the law, no doubt their inaction would have received the condemnation of the public. In such cases, necessity rather than the letter of the law should govern. The local commander must exercise his best judgment and his judgment alone, and must assume the responsibility.

19. Bringing About State of Non-Intercourse.—There still remains to be mentioned a federal statute (Sec. 5301, R.S.) which provides that whenever insurgents fail to disperse as directed in the President's proclamation, he may issue a second proclamation declaring that the inhabitants of a State, or a portion of a State, are in a state of insurrection; and thereafter, while the condition of insurgency continues, all commercial intercourse directed to or

from the designated territory is unlawful, and all goods found in such unlawful transit, and also vehicles transporting either passengers or goods to or from such insurgent territory, shall be forfeited to the United States. The law does not authorize the issuance of this proclamation until after employment of the militia, as well as federal troops, in an effort to quell the disturbance.

20. WHO MAY ORDER OUT FEDERAL TROOPS.—Consideration of a number of cases in which federal troops have been used in connection with domestic disturbances, and of the laws under which they were used, leads to the conclusion that federal troops may be so ordered out under the following conditions:

a. By the President:

(1) If requested by the legislature of a State, or by the executive of the State if the legislature be not in session and it is impracticable for it to be convened in time.

(2) Without request, and even against the protest of the State authorities, in order to carry out the guaranties of the Federal Constitution.

(3) If property of the United States is being endangered or destroyed, or if the execution of the federal laws can not be enforced by the usual processes, or if the transportation of the mails is being hindered, or if interstate commerce is being interrupted.

In the cases referred to above, the President is the sole judge of the exigency.

b. By corps area commanders or by local commanders of troops, for the defense of federal property or instrumentalities, provided the emergency is so great or the danger so imminent as to demand instant action without awaiting instructions requested through the speediest means of communication available. In such case the officer must assume the responsibility for taking such action as the circumstances require until he can make a full report to the War Department and receive instructions.

c. Upon call of the Governor of Hawaii, the Governor General of the Philippines, or the Governor of Porto Rico,

on the commanding officer for assistance of troops stationed in those places, under the provisions of the Acts of April 30, 1900 (31 Stat. 153), August 29, 1916 (39 Stat. 552), and March 2, 1917 (39 Stat. 955), respectively. (See paragraph 15, supra, with reference to Alaska.)

21. HABEAS CORPUS.—*a*. The writ of habeas corpus is an order issued by a judge and addressed to the custodian of a prisoner, directing that such custodian bring the prisoner into the court in order that the legality of the arrest and detention may be inquired into. The purpose of the writ is to prevent imprisonment without trial, or imprisonment on false or trivial charges with a consequent long wait until the case regularly comes up for trial.

b. The necessity for considering this subject in this connection is the fact that when the military authorities arrest the leaders of a mob or those who are inciting a mob to violence, it will almost surely follow that such men are of more than ordinary consequence in the community and that their freedom is quite necessary to the continuance of the disorders. Therefore, these men will early attempt to secure release by petitioning for a writ of habeas corpus. If they can secure the transfer of their cases to a civil court, they will stand a chance to obtain temporary release on bail and thus be enabled to resume their positions as leaders.

c. The two important things to be remembered by the commander of federal troops under such circumstances are:

First: That if the writ issue from the judge of a *Federal* court, it should be promptly obeyed.

Second: That a *State* court has no authority to issue a writ of habeas corpus requiring the production of a prisoner held by authority of the United States, and it becomes the duty of the commander upon whom such writ is served to make respectful return to the effect that the prisoner is being held by the authority of the United States Government and that therefore the State court is without jurisdiction. (Tarbell's Case, 13 Wall. 397.) It is thus seen that even when the federal troops are employed in aid of the civil authorities of a *State* and would usually turn the prisoners over to those authorities as soon as practicable, yet the commander may exercise his own discretion as to the time at which this may be done without jeopardizing the accomplishment of his mission under the orders of the President.

d. Of course, should the writ of habeas corpus be *suspended* in an area, no such writ issued would be of any force and effect whatever; but that will rarely if ever happen except as an incident of war. The Constitution of the United States provides that the writ shall not be suspended unless when, in case of rebellion or invasion, the public safety may require it (Art. I, Sec. 9).

SECTION IV

Liability of Officers and Enlisted Men Under the Civil Law

Paragraph

Character of the duty involved ---------- 22
Both civil and criminal liability may be incurred ---------- 23
Obedience to orders ---------- 24
How much force may be used, and liability for excess of severity-- 25
Place of trial ---------- 26

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22. CHARACTER OF THE DUTY INVOLVED.—*a.* As a rule officers find duty with troops, ordered out to suppress internal disorders, most distasteful because in a measure they must oppose their own people, must deal more or less with women and children, and must operate under legal restrictions with which they feel unfamiliar. The knowledge that in certain cases an officer may be held personally liable under the civil law for the acts performed by his troops tends to cause him to proceed with more caution and hesitation than when confronted by the ordinary tactical or administrative questions which his training has better fitted him to handle.

b. In the paragraphs which follow, an effort is made to indicate briefly and clearly the present status of the law in this respect.

23. BOTH CIVIL AND CRIMINAL LIABILITY MAY BE INCURRED.—In cases of the exercise of military force in the suppression of internal disorders, the military man is liable

to civil suit or even to criminal prosecution after the emergency ceases. If he has proceeded under statutory authority, his defense is clear; otherwise his chief reliance for defense must be on necessity rather than statute—on public opinion rather than on law. Mr. Hare, in his excellent work on Constitutional law, says with reference to such cases (p. 95) that:

> "All that can be said with certainty is that there must be reasonable and probable cause for believing in the imminency of a peril that suspends the ordinary rules, which must be determined at the time by the commander, but may be reconsidered subsequently by a court or jury, who will rarely look unfavorably on any man who at a critical period has acted in good faith for the protection of the community."

He also says:

> "In no instance, so far as I am aware, has an English or American jury allowed an officer or soldier to suffer for acts done with any shadow of right to repel invasion or quell a mob."

24. OBEDIENCE TO ORDERS.—*a.* Our Army Regulations begin with the statement:

> "All persons in the military service are required to obey strictly and to execute promptly the lawful orders of their superiors."

How shall the officer or enlisted man know when an order is not legal, how much inquiry must he make to determine the legality of the order, what will happen if he obeys the order which is found to be illegal, what will happen if he disobeys an order which he thinks is illegal but which really is legal, and, finally, who decides whether or not the order is legal or illegal? As stated by Major Birkhimer:

> "It can not be too firmly impressed upon the mind of the military man that the first and last duty of the soldier is cheerful obedience. It is not for him to hesitate except to determine how his orders can be most faithfully executed, not only in the letter, but in spirit. This cheerful obedience to the powers that be is the foundation of discipline, which itself is the soul of the military system."

b. Remembering that obeying an illegal order may subject the inferior to punishment criminally or to an action in damages, according to the nature of the case, and that

disobeying a lawful order, which the inferior thought to be illegal, may subject him to punishment at the hands of the military, it becomes necessary to lay down some sort of a general rule for the guidance of officers and enlisted men. In the ordinary military duties, there are few occasions for the application of such rules, for cases of doubt do not arise. Not so, however, when troops are engaged in aiding the civil authorities.

c. In the case of McCall *vs.* McDowell (Federal Case 8673) the court said:

> "Except in a plain case of excess of authority, where at first blush it is apparent and palpable to the commonest understanding that the order is illegal, I cannot but think that the law should excuse the military subordinate when acting in obedience to the orders of his commander. Otherwise he is placed in a dangerous dilemma of being liable to third persons in damages for obedience to the order, or to the loss of his commission and disgrace for disobedience thereto.
>
> "If every subordinate officer and soldier were at liberty to question the legality of the orders of their commander, and obey them or not as they may consider them valid or invalid, the camp would be turned into a debating school, where the precious moment for action would be wasted in wordy conflicts between the advocates of conflicting opinions.
>
> "Between an order, plainly legal, and one palpably otherwise —partcularly in time of war—there is a wide middle ground, where the ultimate legality and propriety of orders depend, or may depend, upon circumstances and conditions of which it can not be expected that the inferior is informed or advised. In such cases, justice to the subordinate demands, and the necessities and efficency of the public service require, that the order of the superior should protect the inferior, leaving the responsibility to rest where it properly belongs—upon the officer who gave the command."

d. In Commonwealth *vs.* Blodgett *et al* (10 Metcalf, 56), on the other hand, the court rejected the doctrine that men ought not to be held responsible for the commission of acts done in obedience to orders which they are bound to obey under penalty of military discipline, and held that the rule should be:

> "That he who does acts injurious to the rights of others can excuse himself, as against the party injured, by pleading the *lawful* commands of a superior whom he is bound to obey."

The converse of this is, of course, that obedience to unlawful commands will not constitute an excuse; but Mr.

Hare says, quoting again from his work on Constitutional law, that:

> "A subordinate stands in a different position from the superior whom he obeys, and may be absolved from liability for executing an order which it was criminal to give. The question is, had the accused reasonable cause for believing in the necessity for the act which is impugned? And in determining this point a soldier may take the order of the person in command into view as proceeding from one who is better able to judge and well informed; and, if the circumstances are such that the command may be justifiable, he should not be held guilty for declining to decide that it was wrong, with the responsibility incident to disobedience, unless the case is so plain as not to admit of a reasonable doubt. A soldier consequently runs little risk in obeying any order which a man of common sense so placed would regard as warranted by the circumstances."

e. The situation has been summed up fairly accurately as follows:

> "If the commands of the superior are illegal and obviously so, the inferior who obeys can not avoid responsibility;
>
> "If the commands are illegal, but not obviously so to the ordinary understanding, the inferior will not be held liable if he obeys;
>
> "If the command is legal, and yet the inferior believes it to be otherwise and disobeys, he will be liable for the disobedience."

25. How Much Force May be Used, and Liability for Excess of Severity.—*a.* Even though an order be legal and proper, a subordinate may nevertheless incur liability by the manner in which he executes the order.

b. It has already been stated as a general proposition that, when the law imposes on an official an obligation to perform a certain duty, it thereby invests him with the authority to use the customary and necessary measures for the discharge of the duty.

In Commonwealth *vs.* Shortall (206, Pa. 165) the court said:

> "While the military are in active service for the suppression of disorders and violence, their rights and obligations as soldiers must be judged by the standards of actual war. No other standards are possible, for the first and overwhelming duty is to repress disorder, whatever the cost, and all means which are necessary to that end are lawful."

c. As a general proposition, as above stated, an officer or enlisted man cannot become liable to any one by reason

of having faithfully and specifically carried out the orders of his superiors. If, therefore, the subordinate acts solely with intent to obey the order, and does not show ill will or vindictiveness or does not exercise undue severity under the circumstances, he will not be held responsible for the consequences.

26. PLACE OF TRIAL.—There was a time in our history when an officer or enlisted man charged with an offense or sued in damages before a civil court, in cases arising from acts done in quelling internal disorders, might be required to appear before a State court of the State in which the cause of action arose. That is still true of the militiaman, but a member of the federal forces has now been given by statute a right to have his case heard in a federal court (see A.W. 117), the reason apparently being that there may be times when the sentiment of the community is unfriendly to the cause espoused by the military and it might be difficult for the soldier to secure a fair trial in the community.

SECTION V

Employment of Federal Troops to Aid State Civil Authorities

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27. HOW STATES OBTAIN FEDERAL AID.—A State desiring aid under Section 5297 R.S., must address a request therefor to the President, the person in whose judgment the law confides the matter of determining when the military shall be used. It would also be well for the State at the same time to notify the commander of the corps area in which the State is located. This will enable the corps area commander to make timely preparation. Indeed there is no *legal* ob-

jection to the corps area commander ordering troops to the scene of the disturbance before the President's proclamation is issued or his orders received, though it would not seem to be good policy for him to do so unless he should regard the situation as *most* urgent. The mere ordering of troops by the corps area commander to a place within his command is a matter which does not require statutory authority, and the moral effect of the presence of troops would alone frequently be sufficiently great to suppress the disturbance.

28. STEPS NECESSARY BEFORE FEDERAL AID CAN BE FURNISHED.—*a*. These are five in number as follows:

(1) A proper and formal application to the President as above stated, this application to be made by:

(a) The legislature of the State in which the insurrection exists, or

(b) By the executive of such State, in cases where the legislature is not in session or cannot reasonably be convened in time to meet the emergency.

(2) A decision by the President that the case is a proper one for interference by the Government of the United States.

(3) A proclamation by the President reciting the situation and the law provided in such cases, and commanding the insurgents to disperse and retire peaceably to their respective abodes within a specified time.

(4) Orders by the President to the Secretary of War or to a proper military commander for such employment of regular troops as he may deem necessary for the purpose; or a formal call by the President upon the executives of neighboring or other States, for such number of their militia as he (the President) may judge sufficient to suppress the insurrection or disturbance.

(5) Proper and formal instructions, from or by authority of the President, to the commanding officer of the troops for his guidance in responding to the call of the State authorities, and for his conduct during the period he is engaged in such service.

b. Not one of these five steps may legally be omitted. In this connection, however, it should be remembered that there are two separate and distinct kinds of insurrection, one against a State, as indicated in R.S. 5297, and the other against the United States, as indicated in R.S. 5298, only one of which requires a request from State authorities.

c. A request by State authority is absolutely necessary under Section 5297, but would be inappropriate and entirely superfluous under Section 5298. On the other hand, although the authorities of a Territory are not bound by Section 5298 to make a request such as is required of the authorities of a State by Section 5297, yet is it not inappropriate for the same procedure to be followed. In fact, the steps taken in securing and furnishing federal aid as a result of the lawlessness which ran riot in the Territory of New Mexico, in 1877 and 1878, parallel so closely the proper procedure for a State case, that the application of the territorial governor for federal assistance, the proclamation of the President granting it (see also paragraph 10), and the orders of the President issued by the War Department for the guidance of the federal troops employed, are set out below by way of illustrating a proper procedure for both State and Territorial cases:

(1) Application of Governor Axtell, dated Santa Fe, New Mexico, August 28, 1878:

> "His Excellency, the PRESIDENT OF THE UNITED STATES OF AMERICA.
>
> "Sir: I have the honor as governor of New Mexico to apply to Your Excellency for protection for this Territory from domestic violence.
>
> "The Territorial legislature is not now in session nor can it be convened at this time.
>
> "There is no Territorial militia nor has the governor authority to call for volunteers.
>
> "The southeastern portion of the Territory is overrun by bands of armed men, numbering in all about 200, who almost daily commit the most atrocious crimes, such as murder, rape, arson, and robbery. Some of these bands come from Texas and some from Old Mexico. One band when asked who they were and where they came from replied: 'We are devils just come from hell,' and when ordered by the sheriff of the county to disband and return to their homes and ordinary avocations they replied, 'We have no homes, we are at our ordinary avocations.'

"These men are not only living upon the good people of the Territory, but are constantly commiting acts of wanton cruelty and violence. Many men have been murdered, and several women and young girls, mere children, have been ravished, and large quantities of property stolen.

"In corroboration of my statement I respectfully refer Your Excellency to the inclosed petition, this day presented to me in person by the county officers of Lincoln County.

"The local authorities are unable to protect the people from this domestic violence.

"I, therefore, S. B. Axtell, governor of New Mexico, do hereby most respectfully ask assistance from the United States under the Constitution and treaties thereof.

"Most respectfully, Your Excellency's obedient servant."

(2) The ensuing proclamation of President Hayes, dated October 7, 1878, was as follows:

"WHEREAS, it is provided in the laws of the United States that whenever, by reason of unlawful obstructions, combinations, or assemblages of persons, or rebellion against the authority of the Government of the United States, it shall become impracticable, in the judgment of the President, to enforce by ordinary course of judicial proceedings the laws of the United States within any State or Territory, it shall be lawful for the President to call forth the militia of any or all the States and to employ such parts of the land and naval forces of the United States as he may deem necessary to enforce the faithful execution of the laws of the United States or to suppress such rebellion, in whatever State or Territory thereof the laws of the United States may be forcibly opposed or the execution thereof forcibly obstructed.

"And whereas, it has been made to appear to me that by reason of unlawful combinations and assemblages of persons in arms it has become impracticable to enforce, by the ordinary course of judicial proceedings, the laws of the United States within the Territory of New Mexico, and especially within Lincoln County therein; and that the laws of the United States have been therein forcibly opposed and the execution thereof forcibly resisted;

"And whereas, the laws of the United States require that whenever it may be necessary, in the judgment of the President, to use the military force for the purpose of enforcing the faithful execution of the laws of the United States, he shall forthwith, by proclamation, command such insurgents to disperse and retire peaceably to their respective abodes within a limited time.

"Now, therefore, I, Rutherford B. Hayes, President of the United States, do hereby admonish all good citizens of the United States, and especially of the Territory of New Mexico, against aiding, countenancing, abetting, or taking part in any such unlawful proceedings; and I do hereby warn all persons engaged in or connected with said obstruction of the laws to disperse and retire peacebly to their respective abodes on or before noon the 13th day of October instant.

"In witness whereof, I have hereunto set my hand and caused the seal of the United States to be fixed."

(3) The War Department instructions to General Sherman, dated October 8, 1878, read as follows:

> "The President has issued a proclamation that, by reason of unlawful obstruction, combinations and assemblages of persons, the laws of the United States within the Territory of New Mexico, and especially in Lincoln County therein, can not be enforced by the ordinary course of judicial proceedings, and commanding the persons composing such combinations or assemblages to disperse and repair peaceably to their respective abodes before 12 o'clock noon on the 13th instant. This proclamation is preliminary to the employment of the troops of the United States to preserve the peace and enforce the laws in case disturbances and unlawful combinations continue after the time named.
>
> "The President therefore directs that you instruct the proper military officer that after the time above mentioned has expired he will proceed to disperse, by military force, all such unlawful combinations or assemblages of persons within the said territory, and that he will, by the use of such force, and so long as resistance to the laws shall continue, aid the governor and authorities of the Territory in keeping the peace and enforcing the laws."

(4) So effective and thorough was the employment of the federal troops pursuant to these instructions that the Territorial authorities soon practically abandoned the preservation of order and maintenance of the laws entirely to the Army, making little or no effort to enforce their own authority. To a complaint by the governor that the troops declined to assist constables in making ordinary arrests, General Pope replied that the troops could only be employed under the President's proclamation to suppress insurrection and restrain lawlessness that was beyond the power of the usual civil machinery to control, and that the use of the troops in the manner requested would be unlawful. These views were concurred in by Generals Sheridan and Sherman, and by the Secretary of War.

29. Effect of President's Proclamation.—A proclamation by the President, such as that quoted above, is required by Section 5300 before the military may be used either under Section 5297 or Section 5298, but, as heretofore stated, such a proclamation never amounts to a "declaration of martial law." It is an interesting though rather surprising fact that the Secretary of War seems at first to have been under the impression that martial law had been declared in New Mexico by the proclamation above quoted,

for on January 19, 1880, he addressed a letter to the Secretary of State asking that:

> "The proclamation of the President of October 7, 1878, declaring martial law within the Territory of New Mexico . . . be withdrawn."

To this the Secretary of State, on February 3, 1880, made the following reply:

> ". . . The proclamation referred to . . . is the proclamation of preliminary warning contemplated by section 5300 of the Revised Statutes, . . . and can not properly be considered a proclamation 'declaring martial law;' it does not suspend or authorize the suspension of the writ of habeas corpus, and it may in the absence of any further Executive proclamation be assumed to have fulfilled the purpose for which it was made at noon the 13th day of the same month, that being the time fixed by the President within which 'all persons engaged in or connected with said obstruction of the laws' were required 'to disperse and retire peaceably to their respective abodes.'"

30. Influence of this Upon the Formulation of Plans.—*a*. The fact that the President's proclamation under Section 5300 does not declare martial law, and the further fact that federal troops operating under either Section 5297 or 5298 are not operating under a martial law situation, are of vital importance to the commander or staff officer who may be charged with the formulation of plans for the suppression of internal disorders. Such plans should not look to the appointment of Army officers to take over the positions and functions of local civil officials, but should be designed with a view to supporting or reinstating and sustaining the proper local officials. The local government may be so shattered that for a brief period the will of the military commander may be almost the only law in the area. During this period he may command the area much as he would a military post or camp or the immediate theater of active military operations, and he may do whatever he considers proper and necessary in the direction of carrying out his mission. He may establish guards, feed civilians, etc., or even remove civilians from a prescribed area where such measure is considered necessary, but, unless the situation is so serious as to call for the establishment of martial law, he may not take over the administration of the local government.

b. It may be urged that in a number of cases some or all of the local civil officials of the disturbed area will themselves be a part of the disturbing element, and that they should therefore be removed from office and others appointed to fill their places. They may have been arrested and placed in confinement and thereby rendered unable to perform their civil functions. The answer is that there will always be a civil official of the State or locality who has the power of removal and appointment, and he should be appealed to; but the power of such removal and appointment does not and can not reside in the military commander.

c. The purpose of both Sections 5297 and 5298 is to restore civil authority to the full exercise of its functions as early as possible. This fact clearly points to cooperation with and maintenance of the civil authority as the proper military policy. Such policy in no way implies the subordination of the military to civil officials. It will rarely, if ever, be the case that civil authority will be absolutely powerless when it has the support of the United States military forces, and if the civil authorities are inclined to do their duty, as they usually are, it should be the policy to maintain the civil courts, whether of a State or of the United States, in the exercise of their powers, to give them every protection necessary, to make arrests for crime if the marshals or sheriffs are unable to do so, to turn the offenders over to the proper court for trial, to guard prisoners, both those who are accused of crime and those who have been convicted, when the proper civil authorities are unable to do so, and to arrest and hold suspected persons. Such policy will in almost any case soon put down the lawless element and restore the civil authority. In fact, with the exception of the Civil War, and possibly the Whiskey Insurrection in Washington's administration, there has not been a domestic disturbance in the United States that could not be quelled in the manner indicated. So long as disturbances usually arise from industrial grievances and not from purposes to overthrow the government, there will be so many law abiding citizens and friends of government, even in the most dis-

turbed localities, as to make it practicable to restore order by these methods.

d. Of course, there can be no serious objection to the preparation of additional plans for the exercise of martial law or military government in the extremely doubtful event that the situation should become so grave as to justify either of these measures, but such plans should be given only secondary consideration.

SECTION VI

Employment of Federal Troops to Aid United States Civil Authorities

Paragraph

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31. HOW UNITED STATES CIVIL AUTHORITIES OBTAIN THE ASSISTANCE OF FEDERAL TROOPS.—The aid of federal troops may be furnished under Section 5298, R.S., either pursuant to a request therefor from federal civil officials, or without such request, provided the President is placed in possession of information such as to convince him that the employment of federal troops is necessary and justifiable under the circumstances. It is not necessary that the President state the source of his information. Such information will usually come from postal or railway mail authorities, from the United States courts, from attorneys and marshals

or other civil officials of the United States, or even from State officers or any other citizens. It is only necessary that the President regard himself as reliably informed that the conditions mentioned in Section 5298 exist.

32. STEPS NECESSARY BEFORE THE AID OF FEDERAL TROOPS CAN BE FURNISHED UNDER SECTION 5298.—*a.* These are not unlike those required in furnishing aid to *State* civil authorities under Section 5297, but omitting the first step. That is, there must be:

(1) A decision by the President that the case is a proper one for the employment of federal troops.

(2) A proclamation by the President reciting the situation and the law provided in such cases, and commanding the insurgents to disperse and retire peaceably to their respective abodes within a specified time.

(3) Orders by the President to the Secretary of War or a proper military commander for such employment of federal troops as he may deem necessary for the purpose, and

(4) Proper and formal instructions from the President to the commanding officer of the troops for his guidance and conduct during the period he is engaged in such service.

b. It must be remembered that we are speaking of employment under Section 5298, and this should not be confused with employment for the general purposes of self-defense, protection of property of the United States, etc., in which case the troops may operate without a proclamation by the President, and may even be ordered out initially by a subordinate commander, without reference to the President, as will appear later.

33. SITUATION UNDER SECTION 5298 COMPARED WITH THOSE UNDER SECTION 5297.—*a.* The situations are *similar*, in that:

(1) Both fall short of amounting to martial law situations, so neither calls for the administration of the local government.

(2) The aid to be given civil officials in either case is that of brushing aside interference so they will be able to resume the performance of their proper functions.

(3) The burden of preparing in peace time the necessary plans for suppressing the disorders will, in either case, fall principally upon corps area commanders and their staffs.

b. The situations are *different,* in that:

(1) A request for federal aid is required by law in one case, in the other it is not.

(2) The corps area commander would communicate in one case with the governor of the State or a designated representative of the governor, and with a United States marshal or other designated federal civil official in the other.

(3) The troops would cooperate with State civil officials and assist in enforcing the processes of State courts in one case, and with federal civil officials and assist in enforcing the processes of federal courts only in the other.

34. INFLUENCE OF THESE DIFFERENCES UPON COMMAND AND STAFF FUNCTIONS AND OPERATIONS.—It will at once be perceived that very little difference is indicated as to the actual fighting or tactical handling of the troops in the two situations. There are some differences of procedure, however, and differences in the plans to be prepared, that will now be considered.

35. PRESIDENT'S PROCLAMATION.—*a.* Let us suppose that a great railroad strike, such as that at Chicago in 1894, has resulted in obstruction to the United States civil authorities, and that it has assumed proportions which are beyond their control; that the situation has been laid before the President, and that he has directed a brigadier general of the War Department General Staff to proceed to the scene of the disturbance and render a report thereon; that this officer's report has been submitted, and, considered in connection with other reports, has satisfied the President that the situation is such as to warrant the aid of federal troops; and that the President has issued orders to the Secretary of

War directing that a suitable number of federal troops be directed to proceed to the scene of the disturbance.

b. The following is illustrative of the proclamation that would be issued by the President:

"WHEREAS, by reason of unlawful obstructions, combinations, and assemblages of persons it has been impracticable, in the judgment of the President to enforce by the ordinary course of judicial proceedings, the laws of the United States within the State of Y, and especially in the city of X within said state; and

"WHEREAS, it is provided in the Constitution that the President shall take care that the laws be faithfully executed; and

"WHEREAS, by the law of the United States it is provided that whenever, by reason of unlawful obstructions, combinations, or assemblages of persons, or rebellion against the authority of the United States, it shall become impracticable, in the judgment of the President, to enforce, by the ordinary course of judicial proceedings, the laws of the United States within any State or Territory, it shall be lawful for the President to call forth the militia of any or all of the states, and to employ such parts of the land and naval forces of the United States as he may deem necessary to enforce the faithful execution of the laws of the United States, or to suppress such rebellion; and

"WHEREAS, it is required that whenever it may be necessary, in the judment of the President, to use the military forces of the United States for the purpose aforesaid, he shall forthwith by proclamation command such insurgents to disperse and retire peaceablly to their respective abodes within a limited time;

"NOW, THEREFORE, I, ———, President of the United States, do hereby, admonish all good citizens and all persons who may be or may come within the city and State aforesaid, against aiding, countenancing, encouraging, or taking part in such unlawful obstructions, combinations, and assemblages; and I hereby warn all persons engaged in, or in any way connected with, such unlawful obstructions, combinations, and assemblages to disperse and retire peaceably to their respective abodes on or before 12:00 o'clock noon on the—day of—, —.

"Those who disregard this warning and persist in taking part with a riotous mob in forcibly resisting and obstructing the execution of the laws of the United States, or interfering with the functions of the Government or destroying or attempting to destroy the property belonging to the United States or under its protection, can not be regarded otherwise than as public enemies.

"Troops employed against such a riotous mob will act with all the moderation and forbearance consistent with the accomplishment of the desired end; but the stern necessities that confront them will not with certainty permit discrimination between guilty participants and those who are mingled with them from curiosity and without criminal intent. The only safe course, therefore, for those not actually unlawfully participating is to abide their homes, or at least not to be found in the neighborhood of riotous assemblages.

"While there will be no hesitation or vacillation in the decisive treatment of the guilty, this warning is especially intended to protect and save the innocent.

"IN TESTIMONY WHEREOF, I have hereunto set my hand and caused the seal of the United States to be affixed.

"Done at the city of Washington this — day of —, in the year of our Lord one thousand nine hundred and — and of the independence of the United States the one hundred and —."

c. Such a proclamation is absolutely required by Section 5300 before the troops could be used to assist in enforcing the laws of the United States, or to assist the federal civil officials in executing the processes of courts of the United States, or to quell the *insurrection* by the employment of actual military force; but as a matter of self-defense and for the protection of its own property and agencies, the government could employ troops without a proclamation, whether there was or was not an insurrection, and did so employ them in the case of the Chicago riots before the proclamation was issued.

36. INSTRUCTIONS TO CORPS AREA COMMANDER.—The following instructions are regarded as illustrative of those that would be sent by the War Department to the corps area commander concerned:

"By direction of the President of the United States, you will cause the 1st Division to proceed at once from its present station to the city of X, there to protect United States property and prevent the obstruction of the United States mails, and, at the proper time, to execute the orders and processes of the United States court, to enforce the faithful execution of the laws of the United States, to put down the insurrection, and otherwise in all respects to compel compliance with the terms of the President's proclamation. The commander of the troops will confer with the United States Marshal of the district, also Brigadier General A, special representative of the President and liaison officer for the War Department, now at X."

37. COMMUNICATION OF CORPS AREA COMMANDER TO UNITED STATES MARSHAL.—*a.* The following letter is considered appropriate in substance to be sent by the corps area commander concerned to the United States marshal at the scene of the disturbance:

"*a.* By direction of the President of the United States, I have ordered the 1st Division of regular troops to proceed to the city of X, there to protect United States property and agencies, to prevent obstruction of the United States mails, and, at the proper time, to assist the federal civil officials in enforcing the laws of the United States and executing the processes of courts of the United States, and, in all respects, to compel compliance with the terms of the President's proclamation.

"*b.* The commander of the 1st Division has been ordered to confer with you and with Brigadier General A, special representative and liaison officer for the War Department.

"*c.* You are, of course, aware that our federal statutes forbid the employment of any part of the Army of the United States as a posse comitatus or otherwise for the purpose of executing the laws except in such cases and under such circumstances as are expressly authorized by the Constitution or by Act of Congress, and that any person convicted of wilfully violating this provision is punishable by a fine not exceeding $10,000, or imprisonment not exceeding two years, or both such fine and imprisonment.

"*d.* The present situation does not justify the institution of martial law, or the use of federal troops to aid in executing the laws of a State or process of a State court.

"*e.* The troops are legally confined to affording you all the aid necessary to carry out the purposes stated in the first paragraph of this letter. This does not derogate from the power of the State to execute its own laws at the same time, and at the same place. The one does not necessarily exclude the other, except where both cannot be executed at the same time, in which case the federal power is supreme.

"*f.* It is hoped that the mere presence of federal troops on the spot may be sufficient to enable you to enforce the laws. Necessity and the time stated in the President's proclamation will determine when and to what extent physical force by the military shall be used, and there is no warrant for such use in the absence of a showing by you to the military commander that, with the civil means at your disposal, used to the limit, your power is being actually obstructed to such degree as to render your functions impossible of execution.

"*g.* The proclamation issued by the President calls upon innocent peoples to leave the scene, and warns the rioters to disperse within a specified time. If, at the expiration of the specified period, the rioters have not so dispersed, the military commander is authorized by law, and has been directed by me, to use all the force he may deem necessary to disperse the mob and put an effectual end to the insurrection.

"*h.* At the end of the period specified in the President's proclamation, if the directions contained in that proclamation have not been obeyed, your function of using physical force against the disturbing element, so far as concerns independent action by you, temporarily ends. No one other than the proper military superiors can interfere in any way with the manner in which the troops operate against the rioters, or give them any orders or make any suggestions which they are bound to accept. The military commander is the sole judge of how the end desired by the federal civil authorities shall be accomplished. He is also the judge of when that end has been accomplished, and as to when you should be called upon again to function. While he has been directed to do all in his power to promote harmony and cooperation of the military with the civil authorities, the limits of his discretion in this respect are circumscribed by the regulations cited in the paragraphs which follow.

"*i* In the enforcement of the laws, federal troops are employed as a part of the military power of the United States and act under the orders of the President as Commander-in-Chief. They can not be directed to act under the orders of any civil

officer. The commanding officers of troops so employed are directly responsible to their own military superiors. Any unlawful or unauthorized act on their part would not be excusable on the ground of an order or request received by them from a marshal or any other civil officer. (See par. 7, A.R. 500-50.)

"*j.* Troops called into action against a mob forcibly resisting or obstructing the execution of the laws of the United States or attempting to destroy property belonging to or under the protection of the United States are governed by the general regulations of the Army and apply military tactics in respect to the manner in which they shall act to accomplish the desired end. It is purely a tactical question in what manner they shall use the weapons with which they are armed—whether by fire of musketry and artillery or by the use of bayonet and saber, or by both, and at what stage of the operations each or either mode of attack should be employed. This tactical question shall be decided by the immediate commander of the troops, according to his judgment of the situation. (See par. 8, A.R. 500-50.)

"*k.* You are expected to retain a sufficient force at the zone of the disturbance to proceed with your duties when the military shall have removed the obstruction. The federal civil authorities will be called upon to assume custody of the civil prisoners and to arrange for warrants, when necessary, authorizing search of habitations for escaping rioters or other malefactors who are or may have been actually engaged in resisting the military, or who, although not present, actually aided or abetted the rioters.

"*l.* Civilians arrested by the military will, as a rule, be turned over at once to the federal civil authorities, to be immediately removed from the scene and confined. Sufficient military aid will be given to secure and transport them to federal civil places of confinement, and, if attempts to capture them are active, sufficient military guards will be furnished outside of such places of confinement to give effective security. All processes such as habeas corpus relating to these prisoners will be cared for by the civil authorities, since legal custody of the prisoners will be in the United States Marshal, and all such processes will run to and against that official.

"*m.* It is requested that you be prepared, on the arrival of the troops, to submit to the commanding officer thereof a report of the situation, in writing, covering the following points:

"(1) Object and extent of the rioting.

"(2) Approximate strength and dispositions of the mob, with names of leaders.

"(3) Whether and to what extent the mob is armed, and whether casualties have occurred, and if so what.

"(4) Strength and dispositions of your own force.

"(5) Facts showing the nature of the actual resistance.

"*n.* It is desired that you feel free to communicate your wishes and advice to myself or my headquarters and to the commander of the troops, and please direct your subordinates to do likewise. It would be preferable for such communications to be reduced to writing for the purpose of official record. Also, for the same purpose, it is requested that you furnish me copies of your reports of the situation, with names of rioters, casualties, damages, arrests, trials, etc.

"*o.* Major B, who will hand you this letter, has been designated as liaison officer between you and myself. You may entrust him with any communication or report intended for me or

my headquarters, or offer through him any suggestions or advice that you consider will aid or affect the accomplishment of our joint object.

"*p.* The commander of the troops has been furnished additional copies of this letter and he has been directed immediately upon his arrival to ascertain whether you have received your copy, also whether the other civil officials with whom he is to cooperate have been made aware of and understand its contents."

b. The foregoing contemplates that pertinent information respecting the particular area, such as public buildings, railroads, factions, leaders, etc., shall previously have been collected and arranged by the corps area staff, and that this information has been or is to be made available to the commander of the troops. Should this not have been done, or should the information be incomplete or not up to date, it would be necessary to amplify paragraph *m* of the above letter by asking the United States marshal to obtain the additional information necessary and include it in the written report to be handed the commander of the troops.

38. INSTRUCTIONS FROM CORPS AREA COMMANDER TO COMMANDER OF TROOPS.—The order for the movement of the 1st Division to the scene of the disturbance would be issued by corps area headquarters in the usual form of a general order or telegram. (See No. 52, Appendix C.) This order would be amplified by a confidential letter conveying more or less detailed special instructions to the division commander, of which the following are conceived to be illustrative:

"*a.* In amplification of General Orders No.——, these headquarters, this date, you are advised that the legal limitations upon the employment of the forces under your command and the procedure to be adopted by you in the performance of this duty, are as outlined in the attached copy of a communication to the United States Marshal and will be strictly complied with.

"*b.* Upon the arrival of your command at the scene of the disturbance you will make such display of force for moral effect as you may deem expedient. This alone may have the effect of accomplishing everything desired. Should this prove ineffective, your next effort will be to get in touch with the leaders of the disturbing element and win them to your side or convince them of the futility of further resistance. This may secure their cooperation in putting down the disturbance without bloodshed. You will cooperate closely with the United States marshal and other federal civil authorities throughout and will keep me constantly advised as to the situation.

"*c.* It is hereby emphasized that, for the present, the troops under your command can be used only to protect federal property and agencies or property in federal possession. They may not assist in executing United States judicial process, in enforcing federal law, or in forcibly putting down the *insurrection as such* until after failure on the part of the rioters to comply within the specified time with the directions contained in the President's proclamation. Then, and in that event only, you are authorized and hereby directed to proceed immediately against the rioters in such way as in your discretion and best judgment will most promptly and effectually put an end to the insurrection."

CHAPTER V

Martial Law

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SECTION I

General Survey

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1. DEFINITION.—Martial Law may be briefly defined as military rule exercised at home, in an emergency justifying it, by the United States or a State over its own citizens or subjects in situations where they are not legally enemies. (See also Chap. III, Sec. I, par. 2.)

2. GENERAL USE OF THE TERM.—*a.* The term "martial law" is a misnomer. "Martial rule" or "military rule" would be much more nearly accurate terms. The statement by Wellington in the House of Lords that martial law is no law at all, but is merely the will of the commander of an armed force, has been universally accepted. Even for the purpose of expressing the idea of military rule, however, no term has been more loosely used, both by the courts and text-writers, than has the term "martial law." Until recently

it was used, as it still is in England, to signify the military government which a belligerent exercises in territory of the enemy under the law of war, and courts and publicists frequently still use the term in that sense.

b. The distinction between military government and martial law has already been pointed out. The term "military government" is now fairly well understood by the officers of our Army, but the term "martial law," as above indicated, is still so loosely used as to cause much confusion in thought. It is frequently employed to denote any form of exercise of authority by the military over the civil public. Its use in that broad sense, however, would erroneously include all occasions where the military is employed under the authority of a statute. When so employed, the military is nothing more than a superior police force. It does not operate under martial law. It is not called out to *supersede* civil authority but to *maintain* or *restore* it.

3. TRUE MEANING OF THE TERM.—*a.* The best recent authorities employ the term "martial law" in the sense of denoting a situation where, civil authority being ineffective, the State or National government, through its military forces, controls the civil population *without authority of written law, as necessity may require.* This brushes away confusion and enables us to determine rather definitely the responsibility of the military. It includes those cases where, upon invasion of our territory by an enemy, the local commander, as a means of national defense and safety, exercises martial rule in the theater of invasion (as did General Jackson at New Orleans), or in case of civil war where the President or local commander exercises it in territory more or less disaffected and in close proximity to the theater of hostilities (as with the case in the border States of New Mexico, Kentucky, and Maryland during the Civil War).

b. There have been numerous instances of the exercise of martial law by *State* governments in districts where civil authority was powerless to preserve order. In fact, the States have had, and will continue to have, much more frequent occasion for the exercise of martial law than the

United States, the reason being that the preservation of domestic order in our country is primarily a *State* function.

c. Martial law is nothing more than the exercise by a government of the right of self-defense. It was said by the Supreme Court of the United States in the case of Luther *vs.* Borden (7 How. 45) that:

> " . . . unquestionably, a state may use its military power to put down an armed insurrection, too strong to be controlled by the civil authority. *The power is essential to the existence of every government,* essential to the preservation of order and free institutions, and is as necessary to the States of the Union as to any other government. The State itself must determine what degree of force the crisis demands."

d. It has been said that even if martial law were forbidden by the Constitution or by statute it would break through and assert itself when necessity required—and it would. It is not a part of the Constitution, but is rather a power to preserve the Constitution when constitutional methods prove inadequate to that end. It is the *law of necessity.* Manifestly it cannot be instituted at the caprice of an executive or a military commander. It cannot, strictly speaking, be created by declaration. As has been said by good authority, it proclaims itself. A declaration of martial law is an announcement of a fact rather than the creation of that fact. A declaration is nevertheless proper as informing the public of the intentions of the government, and is useful by way of advising the public as to the behavior which the government will require.

4. Necessity for Considering Martial Law.—Martial law and military government have been closely associated in our discussion of the distinction between them. The latter has been considered in detail in a preceding chapter (see Chapter III), so it is logical that the former should now be taken up for somewhat detailed examination. This is advisable more from a logical standpoint than it is from the standpoint of the practical importance of the subject, however, for it is a fact that martial law may be relegated to the background and almost forgotten so far as the suppression of most internal disorders by federal military

force in our country is concerned. For this reason the subject of martial law was not included in the preceding chapter on Domestic Disturbances. Another reason why it has been deemed best to treat the subject in a separate chapter is that, since federal forces employed in the suppression of internal disorders would, in the great majority of cases, be operating under statutory authority, not martial law, such separate arrangement tends to correct any impression that heretofore may have been entertained to the effect that federal troops led forth to suppress local disturbances would *ipso facto* be operating under martial law.

5. Occasion for its Exercise.—*a.* It is a principle governing the exercise of martial law that is not to be inaugurated precipitately or inconsiderately, and that it is to be continued only so long as the public exigency which brought about the necessity for its exercise shall prevail. When the exigency shall have ceased, or within a reasonable time thereafter, the status may, indeed *must,* be deemed to have lapsed, after which it cannot lawfully be further continued or enforced.

b. The situation close to the fighting in the immediate theater of active military operations is usually such that practically no rule is known or can be exercised except military rule in accordance with military necessity and the will of the commander. It will make very little practical difference in such a case whether the activities are on hostile or friendly soil, for there is very little government other than strictly military rule that it will be practicable to set up and exercise. If a government should be set up and exercised, however, it will be either military government or martial law, depending upon whether it is located on hostile or friendly territory. If the former, it is military government; if the latter, it is martial law. The difference in the manner of exercising the government will be considered in a subsequent section. (See Sec. II, pars. 13 *et seq.* of this chapter.)

c. The Supreme Court of the United States has said in the Milligan Case (4 Wall. 127) that martial law is "con-

fined to the locality of actual war," and also that it "can never exist when the courts are open and in the proper and unobstructed exercise of their jurisdiction." The situation must be such that the local laws cannot be enforced by the local governmental machinery. The local government must be so shattered that for a period the will of the commander is the only law in the area that is capable of enforcement. During this period the military commander may do whatever he considers proper in the direction of carrying out his mission, such as commanding the area, policing it, feeding civilians, etc., but he may not administer the local government for any period during which it is capable of being administered by the proper local civil officials.

6. LIMITATIONS UPON ITS EXERCISE.—*a.* Martial law is not an absolute power. It is the will of the general who commands the army, but the occasion and justification for its employment, like the exercise of the right of self-defense by an individual, is necessity. It may not be permitted to serve as a pretext for *license* or *disorder* on the part of the military, and acts of undue violence or oppression committed in its name will, by the laws of war, be visited with extreme punishment.

b. In general, its limitations may be considered as paralleling very closely those relating to military government. Keep in mind, however, that military government situations deal with territory and subjects of the enemy, whereas martial law situations deal with our own territory and citizens or subjects of our own country that are friendly, at least in a technical sense. In the latter case, so far as the military situation will permit, the administration of the government probably will be more leniently disposed toward the governed, less likely to disturb the tenor of their ways, and more thoughtful, perhaps, of their future. The liberty of the citizen will be less restricted. He may be called upon to perform special service or labor for the public defense, but otherwise he will be left, so far as may be, to the pursuit of his ordinary avocations.

7. MARTIAL LAW AS EXERCISED BY THE BRITISH.—*a.* As already above stated, the British apply the term "martial

law" to their exercise of military government as well as to their exercise of martial law proper, or military rule, on home soil. The latter, that is, martial law on home soil, has not been exercised in England since the Revolution of 1688. The reason it has not been so exercised is that England at about that time enacted a statute, *the Riot Act*, under which the military, acting in aid of the civil authority, may attack mobs not duly dispersing, and this provision, like our own federal statutory provisions on the subject, seems to have proved efficacious for the suppression of such subsequent disorders as have occurred.

b. Martial law has repeatedly been resorted to by the British in Ireland, also in the colonies of Lower Canada, Jamaica, Ceylon, Demerara, and at the Cape of Good Hope.

c. The English authorities have differed as to the correct nature of martial law and the extent of military control which it justifies. Some have considered that it simply permits the application to the citizen of the code of the soldier; others contend that it places in the hands of the military commander a discretionary power to be exerted according as, and so far as, the necessities or the exigencies may require.

d. The latter view is the one which probably more nearly accords with the practice of our own States. We can hardly compare it with our federal law and practice because of the difference in the nature of the two central governments. We have had meager occasion to employ martial law to subject and inferior races, therefore little can be found in common with its exercise in this country and its mode of application in the British colonies.

8. MARTIAL LAW AS DECLARED BY GENERAL JACKSON AT NEW ORLEANS.—*a.* On December 16, 1814, General Jackson issued the following proclamation:

> "Major General Andrew Jackson, commanding the seventh United States military district, declares the city and environs of New Orleans under strict Martial Law, and orders that in future the following rules be rigidly enforced, *viz*: Every individual entering the city will report to the adjutant general's office, and, on failure, to be arrested and held for examination. No person shall be permitted to leave the city without permission in writing, signed by the General or one of his staff. No

> vessels, boats, or other craft will be permitted to leave New Orleans or Bayou St. John without a passport in writing from the General or one of his staff, or the commander of the naval forces of the United States on this station. The street lamps will be extinguished at the hour of nine at night, after which time persons of every description found in the streets, or not at their respective homes, without permission in writing as aforesaid, and not having the countersign, shall be apprehended as spies and held for examination."

b. The British forces under Major General Packenham were at that time threatening the city of New Orleans, but they retreated to their fleet on January 19th. Notwithstanding this retreat, General Jackson continued to exercise martial law until March 13th, the date on which news was received of the ratification of the treaty of peace which closed the war. Whether this continued exercise of martial law after the British had retreated was justifiable under the existing conditions, is a question which is worthy of examination and consideration.

c. Parton, in his *Life of Andrew Jackson,* says with reference to this occasion that

> "All able-bodied men, of whatever race, color, rank or condition, were compelled to serve either as soldiers or sailors. The old men and the infirm were formed into a veteran guard for the police of the town and the occupation of its forts."

This, of course, was quite proper if taken at a time when conditions were so threatening as to warrant such action, and so they were for a time. But after the situation became easier, after the British had retreated, General Jackson not only continued to exercise martial law, but he exercised it in a very severe and arbitrary manner. He issued an oppressive order banishing temporarily from the city the entire French population. A citizen of French extraction who was a member of the Legislature, Louis Louaillier, published a newspaper remonstrance against this order of banishment. For this, General Jackson caused him to be arrested and confined. Judge Hall of the United States District Court granted a writ of habeas corpus directing General Jackson to bring the prisoner before the court to be dealt with according to law. General Jackson's action in reply was to cause the Judge himself to be arrested "for

aiding and abetting and exciting mutiny in my camp." He confined the Judge at the barracks for nearly a week, and then caused him to be conducted beyond the limits of the city. This was strong action, and the outcome was rather interesting. After the announcement of peace, Judge Hall returned, cited General Jackson before the court, adjudged him to have been guilty of gross contempt of court, and imposed upon him a fine of one thousand dollars. General Jackson paid the fine. It was finally refunded to him with interest, not by any court, but by an Act of Congress approved February 16, 1844, nearly thirty years after the fine had been imposed, after General Jackson had twice been elected President of the United States, and only in the year before his death.

d. It is not difficult to perceive the important principles which General Jackson violated on this occasion. They were:

(1) Martial law is proper only when the courts are unable to function and the laws of the land can not be duly enforced.

(2) When the emergency has ceased, or within a reasonable period of time thereafter, the status of martial law must be deemed to have lapsed and can not lawfully be further continued or enforced.

9. MARTIAL LAW AS DECLARED BY GENERAL SCOTT IN MEXICO.—*a.* The declaration of martial law by General Scott in Mexico, in 1847, is remarkable for two reasons: first, because it was unnecessary, and second, because General Scott, in his general order inaugurating or announcing it, first instituted *military commissions* for the trial of offenders. His formal declaration was as follows:

> "Martial law is hereby declared as a supplemental code in and about all cities, towns, camps, posts, hospitals, and other places which may be occupied by any part of the forces of the United States in Mexico, and in and about all columns, escorts, convoys, guards and detachments of the said forces, while engaged in prosecuting the existing war in and against the said republic and while remaining within the same."

b. As already remarked, this declaration was a superfluous and unnecessary proceeding which added nothing to

the military authority or jurisdiction. The region and people to which it related were already subject to the military government which was incident to the conquest and occupation of the enemy's country. It did, however, serve one useful purpose—that of notice.

10. PRESIDENT'S DECLARATIONS OF MARTIAL LAW.—*a.* As above observed, the border region in actual war is a place where martial law situations are likely to arise. By proclamation of July 5, 1864, the President announced the establishment of martial law in the State of Kentucky, which was not one of the Confederate States. The reasons for this action were set forth in the preamble as follows:

> "Whereas many citizens of the State of Kentucky have joined the forces of the insurgents, and such insurgents have, on several occasions, entered the State of Kentucky in large force, and, not without aid and comfort furnished by disaffected and disloyal citizens of the United States residing therein, have not only disturbed the public peace, but have overborne the civil authorities and made flagrant civil war, destroying property and life in various parts of that State; and whereas it has been made known to the President of the United States by the officers commanding the national armies, that combinations have been formed in the said State of Kentucky with a purpose of inciting rebel forces to renew the said operations of civil war within the said State, and thereby to embarrass the United States armies, now operating in the said States of Virginia and Georgia, and even to endanger their safety;"

The proclamation concludes as follows:

> "The martial law herein proclaimed, and the things in that respect herein ordered, will not be deemed or taken to interfere with the holding of lawful elections, or with the proceedings of the constitutional legislature of Kentucky, or with the administration of justice in the courts of law existing therein between citizens of the United States in suits or proceedings which do not affect the military operations or the constituted authorities of the government of the United States."

b. Martial law has been so proclaimed in terms by the President only twice. The other occasion was early in the Civil War when, on September 24, 1862, he declared "subject to martial law" not only the insurgent enemies in the insurrectionary States, but also

> "their aides and abettors within the United States, and all persons discouraging volunteer enlistments, resisting militia drafts, or guilty of any disloyal practice affording aid and comfort to rebels against the authority of the United States."

c. In connection with these two instances, the question naturally arises as to how it is possible that martial law could thus exist and be exercised in those places where the courts were able to function and where the State and also the United States governmental administrations were in operation. The answer is that *it could not*, but the fact had not been established at that time. The decision in the Milligan case was not promulgated until a later date, 1867.

SECTION II

Employment of Federal Troops in Martial Law Situations

Paragraph

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11. WHAT IS MEANT BY MARTIAL LAW SITUATIONS.—*a.* In Chapter IV, we considered principally the suppression of internal disorders in the manner provided for in the Constitution of the United States and the federal statutes written in pursuance of it, and we learned that the methods therein provided will probably be sufficient for the suppression of most of the disorders that are likely to arise in this country.

b. The present chapter takes up the last class of disturbances which it will be necessary for us to consider in connection with the present study—those for the suppression of which neither the Constitution nor any federal law makes adequate provision.

c. Reference is made in the preceding chapter to certain cases where federal troops may be ordered out notwithstanding that there is no constitutional or statutory provision authorizing it, as where the President orders them out to protect government property, or where they are ordered out by a subordinate commander without reference to the President in case of a sudden emergency which is so serious and urgent as not to admit of the delay that would be incident to following the prescribed procedure. While it is true that the authority for *so ordering them out* is the law of necessity or martial law, yet the troops after they arrive at the scene of the disturbance would seldom operate under a *martial law situation.* They will confine themselves to the purposes for which they were ordered out, such as the protection of property, etc., and the case would be rare indeed where they would be justified in exceeding the limitations that would have been imposed upon them by law had they been ordered out by the President under the statute appropriate to the particular case or one analogous to it.

d. Our study for this chapter does not concern itself so much with the authority for ordering out the troops as it does with determining when, *after they are ordered out,* they would be operating under a martial law situation. The only way to determine this is by examining the situation itself. As heretofore stated, a martial law situation is one in which the municipal laws cannot be enforced and it is impossible for the civil courts to function for a period of time. Whether there was or was not statutory authority for ordering the troops out in the first place, obviously can have nothing whatever to do with determining this question.

12. How Martial Law Situations May be Recognized and What in General May be Done Under Them. —*a.* We are here concerned with those things which the Constitution and statutes of the United States *do not authorize* the military to do, yet which, if it does them, necessity and not law will justify its action. Since the occasions for such employment of the military are fortunately rare, little of judicial precedent is found to guide us. In fact there is but one federal decision directly in point (*ex parte* Mili-

gan, 4 Wall. 141) and only one of the many questions which might arise was presented in that case. The question was whether the conviction of Milligan by a military commission in Indiana, in 1864, was legal, and it was decided in the negative. In its opinion rendering the decision, the Supreme Court of the United States said:

> "Martial law cannot arise from a *threatened* invasion. The necessity must be actual and present, the invasion real, such as effectively closes the courts and deposes the civil administration. * * * * It follows, from what has been said on this subject, that there are occasions when martial rule can be properly applied. If, in foreign invasion or civil war, the courts are actually closed, and it is impossible to administer criminal justice according to law, then, on the theater of active military operations, where war really prevails, there is a necessity to furnish a substitute for the civil authority, thus overthrown, to preserve the safety of the army and society; and as no power is left but the military, it is allowed to govern by martial rule until the laws can have their free course. As necessity creates the rule, so it limits its duration; for, if this government is continued *after* the courts are reinstated, it is a gross usurpation of power. Martial rule can never exist where the courts are open, and in proper and unobstructed exercise of their jurisdiction. It is also confined to the locality of actual war."

b. The conclusion to be reached from this and other cases examined is that, under martial law situations, provost courts, military commissions, or other courts created by the military commander may, when and to the extent necessary to restore order, punish those guilty of acts, whether in disobedience of military orders or otherwise, which obstruct the military in its enforcement and maintenance of order. Such acts may be punished as offenses against the military regime, and they may or may not be prohibited by the civil law; but if offenses against the civil laws are to be tried and punished *as such,* their trial should await the restoration of civil authority to the exercise of its functions. One of the cardinal principles of martial law, that it shall be no severer in degree than necessity requires, is thus observed, and the military does not displace the civil authority, but leaves it unimpaired.

13. How This Affects the Preparation of Plans. —It is clear from the foregoing that the plans to be prepared for the administration of martial law must take into con-

sideration many additional factors not involved in handling the ordinary cases of internal disorders. The fact that the local laws cannot be enforced and that it is impossible for the civil courts to function means that some sort of a governmental machinery must be supplied for the area and that this machinery must be administered, or at least directed, by the occupying military force until the regular civil governmental machinery is again able to function. It will be necessary, therefore, to examine the nature of the problem involved and determine what sort of governmental machinery may and should be supplied before we can proceed intelligently to the preparation of the necessary plans.

14. NATURE OF THE PROBLEM.—Martial law will always be administered on home territory. The task of planning for the kind of local government that is to be administered, and the task of administering it, will therefore be much easier and in many respects simpler than is usually the case with military government, for the reason that the latter is usually administered on foreign territory and has to do with foreign inhabitants, strange laws, and customs with which the occupying forces are often unfamiliar. In the case of martial law, both the inhabitants and the members of the occupying military force usually understand each other, speak the same language, and have the same general customs. Both will be familiar with the governmental system to be set up and administered, for it is simply a case of reestablishing, as soon as may be, the system that previously existed.

15. LOCAL LAWS.—No changes will be made in the local laws as such, but the military commander may issue such instructions in the form of proclamations or orders as he may deem necessary. These may be at variance with the local laws, if this cannot well be avoided, but should conform to them as closely as the circumstances of the particular case will permit.

16. LOCAL CIVIL OFFICIALS.—The local civil officials should be retained or reinstated to the fullest extent permitted by the military situation. The military commander has the full power to remove local civil officials for cause,

and to appoint others to fill their places, and he may appoint either military men or civilians, as he deems best. The wisest course would seem to be always, if possible, to appoint experienced or competent civilians to such positions rather than military officers who are inexperienced in civil administration. Not only will this usually insure more efficient administration, but it will leave the military officers free to perform their normal functions except as may be necessary for them to act in a supervisory capacity in relation to the civil administrators, and will moreover facilitate the transition to the normal state of affairs when the martial law situation comes to an end.

17. LOCAL CIVIL COURTS.—*a.* Here we come to the great difference between martial law and military government situations. In the case of military government, the military commander may use the local civil courts for the trial of civilians. In the case of martial law, he may not utilize the local civil courts at all, for the simple reason that the moment they are able to function, the martial law situation has come to an end. He should seek to reestablish them at the earliest possible moment, but he may not administer them after they are reestablished.

b. In the McDonald case (143 Pac. 954), the Supreme Court of Montana said:

> "It may be granted that courts which are prevented by insurrection from executing their process are not open in contemplation of the law. To open them is a part of the duty devolved upon the military. It was conceded at bar that some of the courts of Silver Bow county are in operation, though it was insisted to be only such as are permitted by the military authorities, the others being closed by their order. No such cloture can be recognized."

The same court said in the same case:

> "We have somewhere met with the argument that, because the insurrection may be prolonged, the summary trial of offenders is preferable to their indefinite detention. This is not even an argument from necessity, but from convenience."

c. It will be noted that the foregoing is quoted, not from the opinion of a federal court, but from the decision of the Supreme Court of Montana. It is nevertheless of

value in examining the present question. Many of the States (including Montana and Colorado) have provisions in their constitutions making the governor responsible that the laws are faithfully executed and giving him power to call out the militia of the State to suppress insurrection. The powers thus vested in the governor and the duties imposed upon him are analogous to the duties and powers of the President under the federal statutes heretofore considered. In determining what federal troops may lawfully do, therefore, we are aided by a number of decisions, such as the above, of the courts of last resort of those States.

18. MARTIAL LAW COURTS.—The governmental machinery need not be without courts for the administration of justice during the period of the exercise of martial law, for the military commander may create such provost courts as he may deem necessary, and may use military commissions for the trial of serious cases. The fact above stated should be kept in mind, however, that if offenses against the civil law are to be tried and punished *as such,* their trial should preferably await the restoration of the civil courts.

19. PLAN OF THE COMMANDER.—This parallels very closely the plan for the establishment and administration of military government, except in the important respects already stated in the two preceding paragraphs. In fact, martial law and military government will often be administered in different parts of the same occupied area, and they may be so much alike as to make it difficult to determine where one leaves off and the other begins. The determining factor is whether it is being administered on friendly or hostile territory. Political boundaries between countries are not always the dividing line. Not all military governments, be it remembered, are administered on foreign territory. Some may be administered in our own country, and this will always be so in cases where the inhabitants of the occupied portion of our own territory are legally enemies (*i. e.* treated as belligerents), as was the case in the Southern States during or as an aftermath of the Civil War.

20. STAFF ADMINISTRATION.—Military government and martial law are essentially different with respect to the probable duration and also the extent of territory over which each is likely to be exercised. Military government may have to be administered for a considerable period of years over a whole State or the entire country of an enemy. In the case of martial law, the situation is entirely different. The area over which it is to be exercised will likely be a comparatively small or restricted one. The problem will be comparatively simple. The duration will be comparatively brief. It will almost invariably be administered throughout by the same command. Because of these factors, especially the one last stated, no necessity exists for the organization of a special staff section to take charge of the civil administration, as we have already learned is the case with military government.

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*Where forms and illustrative examples listed appear elsewhere in the text, they are not repeated here but are merely cited for convenience of reference.

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No. 1

SAFEGUARD

(Date and place of issue)

All officers and enlisted men belonging to the.....
are directed to respect the premises of.....
situated at.....

No requisitions thereon, or damage thereto, will be permitted, and protection will be afforded by all officers and enlisted men against any person who shall attempt to act in violation of this order. (See A.W. 78.)

.....
(Signature of Officer)

.....
(Rank, etc.)

No. 2

SAFE CONDUCT

(Place and date of issue)

Photograph

.....residing at.....
(if on mission state the same) is authorized to proceed to
.....for the purpose of.....
He will follow the route..... He is authorized to take with him..... This
(persons, articles, vehicles)
safe conduct is good until.....

All military authorities are directed to protect the bearer of this safe conduct and in nowise to molest him.

.....
(Signature of Officer)

.....
(Rank, etc.)

No. 3

CORRESPONDENT'S PASS

WAR DEPARTMENT
WASHINGTON

.....
(*Date*)

Photograph

The bearer, Mr. ....., whose photograph and signature are hereto attached, is hereby accredited to the Commanding General, ..., United States Army, as a news correspondent of the ..... with permission to accompany said troops, subject to the Regulations governing Correspondents with Troops in the Field and the orders of the Commander of said troops.

This pass entitles the correspondent to passages on military railways and, where accommodations are available, on Army transports, with the privileges of a commissioned officer, including purchase of subsistence, forage, and indispensable supplies when they can be spared.

.....
(*Secretary of War*)

OFFICIAL:

.....
(*The Adjutant General*)

HEADQUARTERS....., ...
(*Date*)

.....
(*Signature of Correspondent*)

.....
(*Commanding*)

No. 4

PASSPORT

.....
(*Place and date of issue*)

Photograph (or finger print, or signature).

Authority is hereby granted to Mr. (or other title) .....living at..... (if on mission state the same), to pass out of the lines for the purpose of.....

He will cross the lines by the road..... (or at a designated point) during the..... (forenoon, afternoon, or day) of.....
(date)

He is authorized to take with him.....
(persons, articles, vehicles, etc.)

He will proceed to.....by the route.....
(destination)

.....

.....
(*Signature of officer*)

.....
(*Rank, etc.*)

NOTE:—This passport is strictly personal and will be void unless used on the date stated.

No. 5

CERTIFICATE OF IDENTITY FOR CIVILIAN EMPLOYEES

Name.....No.....
Organization.....
Capacity.....
Sex.....
Age.....
Color of eyes.....
Color of hair.....
Height.....
Weight.....
Race.....
Finger print, right index.....
Remarks: (Note scars, etc.).....
Place.....
Date.....
Issued by.....

CERTIFICATE OF IDENTITY, Place.....
No..... Date....., 19.....

I certify that.....(Name) is a civilian employee of the Army of the United States in the capacity of.....(Describe function) with.....(Organization)

He is entitled under the laws of war, if captured, to the privileges of a prisoner of war.

Identification data: ..... (Sex) ..... (Age) ..... (Color of eyes)

..... (Color of hair) (Finger print, right index.) ..... (Height, approx.)

..... (Weight, approx.) ..... (Race)

Remarks:.....
(Include here notation of scars, etc., visible when clothed, which will aid in identification)

(Signature.).....

(Title.).....

To be 4 by 8 inches, perforated as indicated, bound in books to retain stubs. To be printed on light-weight bond paper, corresponding numbers of certificates and stubs to be printed in sequence. Certificate to be carried in a small metal container suspended around the neck.

No. 6

CERTIFICATE OF IDENTITY FOR PERSONS ATTACHED TO SANITARY SERVICE

Name.....No.....

Organization.....

Capacity.....

Sex.....

Age.....

Color of eyes.....

Color of hair.....

Height.....

Weight.....

Race.....

Finger print, right index.....

Remarks: (Note scars, etc.).....

.....

Place.....

Date.....

Issued by.....

Form 61
Medical Department, U. S. Army. (Revised Apr. 14, 1915).

CERTIFICATE OF IDENTITY, Place.....

No..... Date ....., 19.....

I certify that.....
(Given name) (Surname)

is attached to the sanitary service of the United States Army, is authorized to accompany the

.....,
(Designate the organization to which attached)

in the capacity of....., and is
(Describe function)

entitled to the privileges and immunities provided in Chapter III of the International Red Cross Convention of 1906. A brassard, as described in Article 20 thereof, which bears the same number as this certificate, has been issued to the person named. Identification data:.....
(Sex)

....
(Age) (Color of eyes) (Color of hair)

(Finger print, right index.) .....
(Height, approx.)

....
(Weight, approx.) (Race)

Remarks.....
(Include here notation of scars, etc., visible when clothed,

.....
which will aid in identification)

(Signature line).....

(Title, etc., line).....

To be 4 by 8 inches, perforated as indicated, bound in books to retain stubs, and printed on light-weight bond paper. Certificate to be numbered at time of issue to correspond to accompanying brassard and carried in a small metal container suspended around the neck.

No. 7

CARTEL

(Signed by Major General Dix and Major General Hill at Haxall's Landing on James River, Va., 22 July, 1862.)

The undersigned having been commissioned by the authorities they respectively represent to make arrangements for a general exchange of prisoners of war have agreed to the following articles:

ARTICLE 1. It is hereby agreed and stipulated that all prisoners of war held by either party including those taken on private armed vessels known as privateers shall be discharged upon the conditions and terms following:

Prisoners to be exchanged man for man and officer for officer; privateers to be placed upon the footing of officers and men of the Navy.

Men and officers of lower grades may be exchanged for officers of a higher grade, and men and officers of different services may be exchanged according to the following scale of equivalents:

A general commanding in chief or an admiral shall be exchanged for officers of equal rank, or for sixty privates or common seamen.

A flag officer or major-general shall be exchanged for officers of equal rank, or for forty privates or common seamen.

A commodore carrying a broad pennant or a brigadier-general shall be exchanged for officers of equal rank, or twenty privates or common seamen.

A captain in the Navy or a colonel shall be exchanged for officers of equal rank, or for fifteen privates or common seamen.

A lieutenant-colonel or a commander in the Navy shall be exchanged for officers of equal rank, or for ten privates or common seamen.

A lieutenant or a master in the Navy or a captain in the Army or Marines, shall be exchanged for officers of equal rank, or six privates or common seamen.

Masters' mates in the Navy or lieutenants and ensigns in the Army shall be exchanged for officers of equal rank, or four privates or common seamen.

Midshipmen, warrant officers in the Navy, masters of merchant vessels and commanders of privateers shall be exchanged for officers of equal rank, or three privates or common seamen.

Second captains, lieutenants or mates of merchant vessels or privateers and all petty officers in the Navy and all non-commissioned officers in the Army or Marines shall be severally exchanged for persons of equal rank, or for two privates or common seamen, and private soldiers or common seamen shall be exchanged for each other, man for man.

ART. 2. Local, State, civil and militia rank held by persons not in actual military service will not be recognized, the basis of exchange being the grade actually held in the naval and military service of the respective parties.

ART. 3. If citizens held by either party on charges of disloyalty or any alleged civil offense are exchanged it shall only be for citizens. Captured sutlers, teamsters and all civilians in the actual service of either party to be exchanged for persons in similar position.

ART. 4. All prisoners of war to be discharged on parole in ten days after their capture, and the prisoners now held and those hereafter taken to be transported to the points mutually agreed upon at the expense of the capturing party. The surplus prisoners not exchanged shall not be permitted to take up arms again, nor to serve as military police or constabulary force in any fort, garrison or field-work held by either of the respective parties, nor as guards of prisons, depots, or stores, nor to discharge any duty usually performed by soldiers, until exchanged under the provisions of this cartel. The exchange is not to be considered complete until the officer or soldier exchanged for has been actually restored to the lines to which he belongs.

ART. 5. Each party upon the discharge of prisoners of the other party is authorized to discharge an equal number of their own officers or men from parole, furnishing at the same time to the other party a list of their prisoners discharged and of their own officers and men relieved from parole, thus enabling each party to relieve from parole such of their own officers and men as the party may choose. The lists thus mutually furnished will keep both parties advised of the true condition of the exchange of prisoners.

ART. 6. The stipulations and provisions above mentioned to be of binding obligation during the continuance of the war, it matters not which party may have the surplus of prisoners, the great principles involved being, first, an equitable exchange of prisoners, man for man, officer for officer, or officers of higher grade exchanged for officers of lower grade or for privates, according to the scale of equivalents; second, that privateers and officers and men of different services may be exchanged according to the same scale of equivalents; third, that all prisoners, of whatever arm of service, are to be exchanged or paroled in ten days from the time of their capture, if it be practicable to transfer them to their own lines in that time; if not, as soon thereafter as practicable; fourth, that no officer, soldier or employee, in the service of either party, is to be considered as exchanged and absolved from his parole until his equivalent has actually reached the lines of his friends; fifth, that the parole forbids the performance of field, garrison, police, or guard, or constabulary duty.

(NOTE:—For comment as to valuation placed upon officers in this cartel, see Chap. II, Sec. V, par. 43.)

No. 8

PAROLE

(of commissioned officers.)

....., ...
(*Place*) (*Date*)

I, ..., now held as a prisoner of war by the United States of America, do pledge my word of honor as a gentleman and an officer that I will not bear arms against the United States nor exercise any of the functions of my office under my commission from the..... to the prejudice of the United States until I am regularly released or exchanged. I further declare that I will not disclose or make known any information that I may have acquired to the injury of the United States or the cause in which they are engaged. In consideration of the above parole I am free to go at large whenever I may see fit, subject to recall, within limits to be prescribed or revocation of parole, to report in person to.....

.....
(*Signature of officer*)

.....
(*Rank, etc.*)

No. 9

OATH ADMINISTERED TO PAROLED ENLISTED MEN

....., ...
(*Place*) (*Date*)

We, the undersigned enlisted men, do solemnly swear that we will not bear arms against the United States of America, nor in any way give aid or comfort to the.....against the United States, during the existence of the war between the said..... and the United States, unless we shall be duly exchanged for other prisoners of war, or until we shall be regularly released by authority of the President of the United States. In consideration of this oath, it is understood that we are free to go wherever we may see fit.

(Signatures).

No. 10

PAROLE

(of civilians)

I, ..., of ....., do hereby give my parole of honor that I will do no act of hostility to the United States and that I will give no information, aid, or comfort to their enemies during the existing war. (*that I will not go beyond the limits of..... without permission of the commanding officer of the United States forces in.....; that I will report myself in person to the said commanding officer once in seven days; that I will surrender myself whenever required by him to do so, and that in the meantime I will hold no correspondence or conversation with any person on political subjects, and have no communication direct or indirect with the Government of..... or with any person within the said.....)

.....
(*Signature*)

*Clauses added in accordance with the prominence and importance of the individual and the restrictions considered appropriate.

No. 11

PAROLE NOT TO RETURN WITHIN LINES

(Usually granted to women.)

....., ...
(*Place*) (*Date*)

We, the undersigned prisoners, do pledge our word of honor that in consideration of our being set at liberty beyond the lines of the United States Army we will not return within said lines during the present hostilities without the permission of .....

(*Signatures.*)

No. 12

PASS TO PAROLED PRISONERS OF WAR

Headquarters.....,

....., ...
(*Place*) (*Date*)

To all military police, patrols, citizens, and to all concerned within the limits of .....

The bearer, ..., a prisoner of war on his parole of honor, is hereby permitted to pass through ..... without let or hindrance or molestation of any kind whatever.

.....
Commanding.

No. 13

ORDER DIRECTING RELEASE FROM PAROLE

Headquarters.....,

....., ...
(*Place*) (*Date*)

GENERAL ORDERS
No..... }

..... who were captured at ..... and subsequently released on parole by ....., are hereby released from said parole and will immediately report for duty with their respective companies, ... having acknowledged, in exchange, the receipt of a like number of prisoners sent to..... by .....

No. 14

REVOCATION OF PAROLE

Headquarters.....,

....., ...
(*Place*) (*Date*)

GENERAL ORDERS
No..... }

It having come to the knowledge of the commanding general that ....., a paroled prisoner of war, has ....., his parole is hereby revoked and he will report forthwith to ....., there to be confined as a prisoner of war.

No. 15

ORDER RESPECTING VIOLATION OF PAROLE

(G. O. 36 issued by Major General Butler at New Orleans, 31 May, 1862.)

* * * *, in the forces of the supposed Confederate States, captured at the surrender of * * * *, have violated their parole of honor under which they, prisoners of war, were permitted to return to their homes instead of being confined in prison, as have the unfortunates of the U. S. soldiers who, falling into the hands of rebel chiefs, have languished for months in the closest durance.

Warned by their officers that they must not do this thing they deliberately organized themselves in military array, chose themselves and comrades officers, relying as they averred upon promises of prominent citizens of New Orleans for a supply of arms and equipments. They named themselves the Monroe Life Guard, in honor of the late mayor of New Orleans.

They conspired together and arranged the manner in which they might force the pickets of the United States and thus join the enemy at Corinth.

Tried before an impartial military commission, fully heard in their defense, these facts appeared beyond doubt or contradiction and they were convicted.

There is no known pledge more sacred; there is no military offense whose punishment is better defined or more deserved. To their crime but one punishment has ever been assigned by any nation—death.

This sentence has been approved by the commanding general. To the end that all others may take warning, that solemn obligations may be preserved, that war may not lose all honorable ties, that clemency may not be abused, and that justice be done—

It is ordered: that * * * * be shot to death under the direction of the provost marshal immediately after the reveille on Wednesday, the 4th day of June next, and for so doing this shall be the provost marshal's sufficient warrant.

No. 16

ORDER CONSTITUTING PAROLE BOARD

Headquarters.....,

....., ...
(*Place*) (*Date*)

SPECIAL ORDERS }
No..... }

.....will constitute a military board to visit ..... and examine prisoners who have applied or may apply to (take the oath of allegiance to the United States and) give their parole (and proper security for good and loyal conduct in future). Printed copies of the (oath), parole, (and bond) will be circulated among the prisoners so that no one who may hereafter be released can plead ignorance of the obligation he may take. A full report will be made as to the character of those applying (to take the oath of allegiance and the security which each one can give); also whether in the opinion of the board the applicant should be released. Having completed these duties the board will return to these headquarters and report.

(NOTE:—The provisions as to oath of allegiance and bond would find appropriate application only in civil war situations.)

No. 17

ORDER DIRECTING TAKING OF OATH OF ALLEGIANCE

(G. O. No. 23 issued by Brigadier General Logan at Jackson, Tenn., 9 July, 1862.)

All citizens over eighteen years of age residing inside the picket-lines of the U. S. forces at this place are required to appear before the provost marshal by Saturday, 12th instant, 12 o'clock m., and take the prescribed oath of allegiance to the Government of the United States of America. All who fail to comply with this order by the above prescribed time will be arrested and disposed of as prisoners of war. Prisoners who have heretofore been paroled do not come within the purview of this order.

No. 18

OATH OF ALLEGIANCE

I do solemnly swear (or affirm) that I will support, protect, and defend the Constitution and Government of the United States against all enemies, whether domestic or foreign, and that I will bear true faith, allegiance, and loyalty to the same, any ordinance, resolution, or law of any State, convention, or legislature to the contrary notwithstanding; and further, that I do this with a full determination, pledge, and purpose, without any mental reservation or evasion whatsoever; so help me God.

.....

(*Signature*)

Sworn to and subscribed before me at ....., this ..... day of ....., ...

.....

No. 19

OATH OF OBLIGATION NOT TO BEAR ARMS

I do solemnly swear (or affirm) that I will not take up arms against the United States or serve in any military capacity whatever against them until regularly discharged according to the usages of war from this obligation.

.....

(*Signature*)

Sworn to and subscribed before me at ....., this ..... day of ....., ...

No. 20

BOND FOR RELEASE

Know all men by these presents that we, ..., principal, and ....., security, are held and firmly bound to the United States of America in the penal sum of ....., good and lawful money of the United States; for the payment of the same as aforesaid we bind our heirs, executors, or administrators firmly by these presents.

Given under our hands and seals at ....., this ..... day of ....., ...

The condition of the above obligation is such that whereas the said ..... has been arrested and is now in custody of the military authority of the United States at the depot of prisoners of war at....., and is desirous of being released from custody upon bail; now if the said ..... shall keep the peace toward all the citizens of the United States of America and shall not take up arms against the United States of America, or adhere to their enemies, or give them aid or comfort or information injurious to the United States or beneficial to their enemies, and shall not advocate or sustain either in private or public the cause of ....., but shall bear true faith and allegiance and loyalty to the Government of the United States of America, any ordinance, resolution, law of any State, convention, or legislature to the contrary notwithstanding, then this obligation to be void, otherwise to remain in full force and effect.

.....(Seal)

.....(Seal)

Signed, sealed, and acknowledged before me, the security being first qualified as to his sufficiency.

.....
(*Commissioner*)

(NOTE:—This would find application only in civil war situations. See note to Form No. 16, *ante*.)

No. 21

ORDER TO SEND PRISONERS OF WAR UNDER FLAG OF TRUCE

Headquarters.....,

....., ...
(*Place*) (*Date*)

SPECIAL ORDERS }
No..... }

The following named prisoners of war confined in..... will be sent to ..... and thence under the flag of truce through the United States lines and released on taking an oath not to engage in arms against the United States.

(Names)

By command of.....:

.....
(*Adjutant General*)

No. 22

COMMUNICATION ACCOMPANYING PRISONERS OF WAR SENT UNDER FLAG OF TRUCE

(Sent by Major General Wool from Fort Monroe to Major General Huger at Norfolk, Va., 17 January, 1862.)

GENERAL: I send herewith by flag of truce the following named prisoners of war, who are permitted to return South on the conditions specified in each case.

* * * * * * *

On the above conditions being complied with the parties interested will consider themselves released from their parole.

No. 23

ORDER OUTLINING MANNER OF RECEIVING A FLAG OF TRUCE

(G. O. No. 143 issued by Major General Rosecrans at Corinth, 23 October, 1862.)

It is often the object of a flag of truce to make observations of positions, strength, roads, etc., for the purpose of attack or otherwise; in fact to gain all the information possible.

The following orders regarding the reception of a flag of truce are given for the instruction of officers and men of this command on outpost, vedette, or grand guard duty, and for all other officers and men who should be acquainted with this as well as other minor details of service.

No person coming from the enemy with a flag of truce must be permitted to advance farther than the outposts or cavalry vedettes.

If a flag of truce approach it will be halted at the usual distance, faced the way it came; the bearer and escort will keep ranks. A messenger will be promptly dispatched to the nearest officer of picket or grand guard, stating the arrival of the flag and rank of officer. He will immediately send a messenger to these headquarters, stating the road, rank of officer, etc. He will then, with one noncommissioned officer and four men, proceed to the flag, see that it is properly halted and faced, and that these instructions are fully carried out until the arrival of a staff officer from these headquarters, who will take charge and give the necessary directions to the officer of the guard.

If the bearer of a flag of truce have papers only he will deliver them to an officer of his rank, who will receipt for them and send the bearer on his way back. If the bearer insists on and can give good reasons for seeing the commanding general he will be met outside the lines, or a staff officer of his rank will have him conducted blindfolded to these headquarters.

Only the officers of the flag will be permitted to enter. The others, if they desire to come just inside our lines, will have their camp guarded by the officer of the guard, but such camp will be in a place where no observations can be made.

No conversation whatever relative to the army is permitted on the part of any officer, soldier, or citizen with any of the party of a flag of truce. All its party shall be treated with the greatest civility and respect.

Any violation of these orders will be promptly and rigorously punished.

Refreshments shall be offered the command and forage furnished for animals.

No. 24

ORDER RESPECTING WANTON DAMAGE, ETC., TO PRIVATE PROPERTY

(G. O. No. 18 issued by Brigadier General McDowell at Fairfax Court House, Va., 18 July, 1861.)

It is with the deepest mortification the general commanding finds it necessary to reiterate his orders for the preservation of the property of the inhabitants of the district occupied by the troops under his command.

Hardly had we arrived at this place when, to the horror of every right-minded person, several houses were broken open and others were in flames by the act of some of those who, it has been the boast of the loyal, came here to protect the oppressed and free the country from the domination of a hated party.

The property of this people is at the mercy of troops who we rightfully say are the most intelligent, best-educated, and most law-abiding of any that were ever under arms. But do not, therefore, the acts of yesterday cast the deeper stain upon them?

It has been claimed by some that their particular corps were not engaged in these acts. This is of but little moment; since the individuals are not found out, we are all alike disgraced.

Commanders of regiments will select a commissioned officer as regimental provost marshal, and ten men as a permanent police force under him, whose special and sole duty it shall be to preserve the property from depredation, and arrest all wrong-doers, of whatever regiment or corps they may be. Any one found committing the slightest depredations, killing pigs or poultry, or trespassing on the property of the inhabitants, will be reported to headquarters, and the least that will be done to them will be to send then to the Alexandria jail.

It is again ordered that no one shall arrest or attempt to arrest any citizen not in arms at this time, or search or attempt to search any house, or even to enter the same, without permission.

The troops must behave themselves with as much forbearance and propriety as if they were at their own homes. They are here to fight the enemies of the country, not to judge and punish the unarmed and helpless, however guilty they may be. When necessary, that will be done by the proper persons.

No. 25

ORDER RESPECTING DAMAGE, ETC., TO PRIVATE PROPERTY DUE TO MILITARY OPERATIONS

(G. O. No. 4 issued by Brigadier General McDowell at Arlington, Va., 2 June, 1861.)

Statements of the amount, kind, and value of all private property taken and used for Government purposes, and of the damage done in any way to private property by reason of the occupation of this section of the country by U. S. troops, will, as soon as practicable, be made out and transmitted to department headquarters by the commanders of brigades and officers in charge of the several fortifications.

These statements will exhibit—

1st. The quantity of land taken possession of for the several field works, and the kind and value of the crop growing thereon, if any.

2d. The quantity of land used for the several encampments and the kind and value of the growing crop thereon, if any.

3d. The number, size and character of buildings appropriated to public purposes.

4th. The quantity and value of trees cut down.

5th. The kind and extent of fencing, etc., destroyed.

These statements will, as far as possible, give the value of the property taken or of the damage sustained, and the name or names of the owners thereof. Citizens who have sustained any loss or damage as above will make their claims upon the commanding officers of the troops by whom it was done, or in cases where these troops have moved away, upon the commander nearest them. These claims will accompany the statements above called for.

The commanders of brigades will require the assistance of the commanders of regiments or detached companies, and will make this order known to the inhabitants in their vicinity, to the end that all loss or damage may, as nearly as possible, be ascertained, whilst the troops are now here, and by whom or on whose account it has been occasioned, that justice may be done alike to the citizen and the Government.

The name of the officer or officers (in case the brigade commanders shall institute a board) who fix the amount of loss or damage shall be given in each case.

No. 26

ORDER AGAINST PILLAGING

(G. O. No. 14 issued by General Bragg at Clear Creek, Miss., 3 June, 1862.)

I. The indiscriminate pillage of the country, and the seizing, under the semblance of authority, of supplies, insignificant in themselves, but necessary for the subsistence of the people, is deprecated and forbidden. Any officer committing or countenancing such acts of vandalism will be promptly and severely punished. Noncommissioned officers and soldiers shall suffer the severest penalty known to the military code.

II. The practice of officers and soldiers billeting themselves upon citizens at discretion and consuming their substance is equally criminal. The commander of the cavalry of this army will scour the country, and arrest all such offenders, and bring them in, that justice may be done.

No. 27

ORDER DIRECTING RETALIATION

(G. O. No. 49 issued by Major General Halleck at St. Louis, Mo., 27 February, 1862.)

Official information has been received that the rebel troops in evacuating Mudtown, Ark., poisoned the provisions which they were obliged to abandon, and that forty-two officers and men of one of our regiments were poisoned by eating these provisions. One brave officer and several men have died and others have suffered terribly from this barbarous act—an act condemned by every civilized nation, ancient and modern.

We cannot retaliate by adopting the same barbarous mode of warfare; nor can be retaliate by punishing the innocent for the acts of the guilty. The law of war forbids this; but the same code authorizes us to retaliate upon the guilty parties. Any persons guilty of such acts, when captured, will not be treated as ordinary prisoners of war; they will not be shot but will suffer the ignominious punishment of being hung as felons. Moreover, all officers are in a measure responsible for the acts of the troops under their command. Officers of troops guilty of such acts, although not themselves the advisers or abettors of crime, will therefore, when captured, be put in irons and conveyed as criminals to these headquarters. The laws of war make it their duty to prevent such barbarities; if they neglect that duty they must suffer the consequences.

No. 28

DECLARATION OF BLOCKADE

To all whom it may concern:

I, ..., commanding the United States forces composing the ....., hereby give notice that by virtue of the power and authority in me vested, and in pursuance of the proclamation of the President of the United States, promulgated under date of ....., an effective blockade of the port of ..... has been established and will be rigidly enforced and maintained against all vessels (public armed vessels of ..... alone excepted) which shall attempt to enter or depart from said port.

.....
(*Commanding*)

.....
(*Rank, etc.*)

Given at ....., on the ..... day of ....., ...

No. 29

COMMUNICATION AUTHORIZING DEPARTURE FROM BESIEGED PLACE

(Letter of August 16, 1904, from General Headquarters of the Japanese Army investing Port Arthur, to the Russian army and navy commanders at Port Arthur.)

YOUR EXCELLENCIES: We have the honor to inform you herewith that it is the humane and magnanimous intention of H. M. the Emperor of Japan, to save from danger and accord protection to the women, children, priests, diplomats, military and naval attaches of neutral powers who are in Port Arthur and wish to avoid the dangers of the bombardment and assault.

In order to carry out the kind solicitation of H. M. the Emperor of Japan, we propose the following:

1. In case you should have the intention of taking advantage of the well-meaning offer of H. M. the Emperor of Japan, you will inform us as to the approximate number of persons who among the above mentioned ought to benefit thereby, and after having divided them into classes; youths of sixteen years or above are excluded from this privilege.

2. Your bearer of the flag of truce bringing the reply must arrive at the first line of the Japanese army, north of Chouet-si-ying, on the main route leading from Port Arthur to Kin-tcheou, tomorrow, August, 17, 1904, before one minute after 6 a. m.

3. The persons specified above will, under the protection of a white flag, repair to the same place where they must arrive on August 17, 1904, before one minute after two o'clock in the afternoon.

4. A troop of our infantry will also go with a white flag and at the time stated to the same place to await the arrival of the persons already mentioned.

5. The persons so stated will each have the right to carry away a single pack of ordinary size, the contents of which can be examined if it is thought necessary.

6. These packs must not contain letters, documents or other written or printed matter relating directly to the war, under pain of confiscation.

7. The persons before specified will be protected and escorted by our troops stated in article 4, as far as Dalny, where arrangements will be made for their departure.

You are requested to accept or refuse the above propositions in a lump, no modifications can be brought about. If the bearer of the flag of truce referred to in article 2, does not arrive at the specified time, we shall consider our proposals rejected.

We avail ourselves of the opportunity to express to you the assurance of our respectful sentiments.

(NOTE:—This offer was not accepted by the Russian authorities.)

No. 30

SUSPENSION OF ARMS FOR BURIAL OF THE DEAD, ETC.

General ....., commanding the United States forces at ....., and General ....., commanding the forces at ....., agree as follows:

ART. 1. A suspension of arms for the space of three hours, beginning at 10 o'clock and ending at 1 o'clock on this ..... day of ..... is agreed to for the purpose of burying the dead and withdrawing the wounded.

ART. 2. The beginning of the suspension of arms shall be notified by two white flags hoisted simultaneously, the one within the United States lines, and the other within the ..... lines. The white flags shall continue flying during the suspension of arms, and such flags shall be lowered simultaneously as a signal of the conclusion of the suspension of arms.

ART. 3. All firing shall cease during the suspension of arms.

ART. 4. The United States troops shall not, during the suspension of arms, advance beyond the line ....., and the ..... troops shall not advance beyond the line ..... The space between the two lines shall be open to all persons engaged in burying the dead, or in attending to the wounded, or in carrying away the dead or wounded, but to no other persons.

No. 31

ARMISTICE BETWEEN OPPOSING FORCES

General ....., commander-in-chief of the United States forces in ....., and General ....., commander-in-chief of the ..... troops in ....., agree to the following articles:

ART. 1. On the publication of this armistice, hostilities shall cease between the United States and ..... forces at all points along the frontier of ..... between ..... and .....

ART. 2. The armistice shall continue until noon on the ..... day of ....., and until such further time as is hereinafter mentioned.

ART. 3. Either side may at any time on or after the said ..... day of ....., give ..... days notice of its intention to determine the armistice, and the armistice shall be determined at the expiration of such ..... days. Notice shall be given by writing, stating the intention to determine the armistice, and sent from the headquarters of one army to the headquarters of the other army. In reckoning time for the purpose of the said ..... days' notice, the day on which the notice is given, at whatever hour the same may be given, shall be reckoned as an entire day, and the armistice shall expire at midnight on the ..... day succeeding the day on which the notice is given.

ART. 4. The lines of demarkation shown on the attached map shall be strictly adhered to during the armistice. The territory lying between the two lines of demarkation shall be strictly neutral, and any advance into it by any member of either army is prohibited except for the purposes of communication between the two armies. Neither army shall extend its line in a ..... and ..... direction beyond the points shown as the extremities of their respective lines.

ART. 5. Subject to the restrictions mentioned in the fourth article, as respects making an advance into the neutral territory, either army may take measures to strengthen its position, and may receive reinforcements and stores of warlike and other material, and may do any other act not being an act of direct hostility.

ART. 6. During the two days following the day on which this armistice is ratified, burial parties from both armies shall be permitted to visit the field of battle of the ..... instant, for the purpose of burying the dead.

ART. 7. The road ..... will be used for communication between the commanders-in-chief of the two armies.

ART. 8. During the continuance of the armistice the peaceful inhabitants of the country shall be allowed to pursue their occupations, and to buy from or sell to either army provisions or goods, but any measures consistent with the observance of the articles of the armistice in relation to the neutral territory may be taken by either army to prevent inhabitants, after entering the lines of or obtaining information respecting one army from passing or carrying information to the other army.

ART. 9. This armistice shall come into force immediately on its ratification by the commanders-in-chief of the two armies, and officers shall be dispatched with all speed, from the headquarters of each army, to give notice of the armistice at all points along the line.

No. 32

AGREEMENT RESPECTING ENTRANCE OF TROOPS OF A BELLIGERENT INTO NEUTRAL TERRITORY

(Military Convention of 1 February, 1871, between the Commander of the First French Army and the General-in-Chief of the Army of the Swiss Confederation for the entry of the French troops into Switzerland.)

The following convention has been made between General Clinchant, General-in-chief of the First French Army, and General Herzog, General-in-chief of the Army of Swiss Confederation:

ART. 1. The French Army demanding to pass into Swiss territory will on entering lay down its arms, equipment, and ammunition.

ART. 2. These arms, equipment, and ammunition will be restored to France after peace and after the definitive settlement of the expenses occasioned to Switzerland by the sojourn of the French troops.

ART. 3. The artillery material and ammunition will be dealt with as above.

ART. 4. The horses, arms, and effects of the officers will remain at their disposal.

ART. 5. Arrangements will be made later as regards the troops horses.

ART. 6. Supply and baggage wagons, after having deposited their contents, will immediately return to France with their drivers and horses.

ART. 7. The treasure chest and post wagons will be handed over with the contents to the Swiss Confederation, which will account for them when the settlement of expenses is taking place.

ART. 8. The execution of these arrangements will take place in the presence of French and Swiss officers nominated for the purpose.

ART. 9. The Confederation reserves the designation of the place of internment for officers and soldiers.

ART. 10. It is the right of the Federal Council to indicate the detailed prescriptions necessary to complete the present convention.

Done in triplicate at Les Verrieres, 1st Feb., 1871.

No. 33

CAPITULATION

(Capitulation of Manila, August 14, 1898.)

The undersigned having been appointed a commission to determine the details of the capitulation of the city and defenses of Manila and its suburbs, and the Spanish forces stationed therein, in accordance with the agreement entered into the previous day by Maj. Gen. Wesley Merritt, United States Army, American commander in chief in the Philippines, and his excellency Don Fermin Jaudenes, acting general in chief of the Spanish Army in the Philippines, have agreed upon the following:

1. The Spanish troops, European and native, capitulate with the city and its defenses, with all the honors of war, depositing their arms in the places designated by the authorities of the United States, and remaining in the quarters designated and under the orders of their officers and subject to control of the aforesaid United States authorities, until the conclusion of a treaty of peace between the belligerent nations.

All persons included in the capitulation remain at liberty, the officers remaining in their respective homes, which shall be respected as long as they observe the regulations prescribed for their Government and the laws in force.

2. Officers shall retain their side arms, horses, and private property.

3. All public horses and public property of all kinds shall be turned over to staff officers designated by the United States.

4. Complete returns in duplicate of men by organizations, and full lists of public property and stores, shall be rendered to the United States within 10 days from this date.

5. All questions relating to the repatriation of officers and men of the Spanish forces and of their families and of the expenses which said repatriation may occasion, shall be referred to the Government of the United States at Washington.

Spanish families may leave Manila at any time convenient to them.

The return of the arms surrendered by the Spanish forces shall take place when they evacuate the city or when the American army evacuates.

6. Officers and men included in the capitulation shall be supplied by the United States, according to their rank, with rations and necessary aid as though they were prisoners of war, until the conclusion of a treaty of peace between the United States and Spain.

All the funds in the Spanish treasury, and all other public funds, shall be turned over to the authorities of the United States.

7. This city, its inhabitants, its churches and religious worship, its educational establishments, and its private property of all descriptions are placed under the special safeguard of the faith and honor of the American Army.

No. 34

EXTRACTS FROM INTERNATIONAL CONVENTIONS AND CONFERENCES

*a. Treaty respecting use of submarines and noxious gases.**

b. Conventions adopted at the Second International Peace Conference held at The Hague, 1907.†

CONVENTION RESPECTING THE LAWS AND CUSTOMS OF WAR ON LAND.

* * * * * * *

SECTION I.—ON BELLIGERENTS

CHAPTER I.—*The qualifications of belligerents.*

ART. I. The laws, rights, and duties of war apply not only to armies, but also to militia and volunteer corps fulfilling the following conditions:

1. To be commanded by a person responsible for his subordinates;

2. To have a fixed distinctive emblem recognizable at a distance;

3. To carry arms openly; and

4. To conduct their operations in accordance with the laws and customs of war.

In countries where militia or volunteer corps constitute the army, or form part of it, they are included under the denomination "army."

ART. II. The inhabitants of a territory which has not been occupied, who, on the approach of the enemy, spontaneously take up arms to resist the invading troops without having had time to organize themselves in

*See Chapter II, Section V, paragraph 41.

†Each of these conventions stipulates that its provisions do not apply except to the contracting powers, and then only if all the belligerents are parties to the convention, but that non-signatory powers may adhere to these provisions.

accordance with Article I, shall be regarded as belligerents if they carry arms openly and if they respect the laws and customs of war.

ART. III. The armed forces of the belligerent parties may consist of combatants and noncombatants. In the case of capture by the enemy, both have a right to be treated as prisoners of war.

CHAPTER II.—*Prisoners of war.*

ART. IV. Prisoners of war are in the power of the hostile Government, but not of the individuals or corps who capture them.

They must be humanely treated.

All their personal belongings, except arms, horses, and military papers, remain their property.

ART. V. Prisoners of war may be interned in a town, fortress, camp, or other place, and bound not to go beyond certain fixed limits; but they can not be confined except as an indispensable measure of safety and only while the circumstances which necessitate the measure continue to exist.

ART. VI. The State may utilize the labor of prisoners of war according to their rank and aptitude, officers excepted. The tasks shall not be excessive and shall have no connection with the operations of the war.

Prisoners may be authorized to work for the public service, for private persons, or on their own account.

Work done for the State is paid at the rates in force for work of a similar kind done by soldiers of the national army, or, if there are none in force, at a rate according to the work executed.

When the work is for other branches of the public service or for private persons the conditions are settled in agreement with the military authorities.

The wages of the prisoners shall go toward improving their position, and the balance shall be paid them on their release, after deducting the cost of their maintenance.

ART. VII. The Government into whose hands prisoners of war have fallen is charged with their maintenance.

In the absence of a special agreement between the belligerents, prisoners of war shall be treated as regards board, lodging, and clothing on the same footing as the troops of the Government who captured them.

ART. VIII. Prisoners of war shall be subject to the laws, regulations, and orders in force in the army of the State in whose power they are. Any act of insubordination justifies the adoption toward them of such measures of severity as may be considered necessary.

Escaped prisoners who are retaken before being able to rejoin their own army or before leaving the territory occupied by the army which captured them are liable to disciplinary punishment.

Prisoners who, after succeeding in escaping, are again taken prisoners, are not liable to any punishment on account of the previous flight.

ART. IX. Every prisoner of war is bound to give, if he is questioned on the subject, his true name and rank, and if he infringes this rule, he is liable to have the advantages given to prisoners of his class curtailed.

ART. X. Prisoners of war may be set at liberty on parole if the laws of their country allow, and, in such cases, they are bound, on their personal honor, scrupulously to fulfill, both toward their own Government and the Government by whom they were made prisoners, the engagements they have contracted.

In such cases their own Government is bound neither to require of nor accept from them any service incompatible with the parole given.

ART. XI. A prisoner of war cannot be compelled to accept his liberty on parole; similarly the hostile Government is not obliged to accede to the request of the prisoner to be set at liberty on parole.

ART. XII. Prisoners of war liberated on parole and recaptured bearing arms against the Government to whom they had pledged their honor, or against the allies of that Government, forfeit their right to be treated as prisoners of war, and can be brought before the courts.

ART. XIII. Individuals who follow an army without directly belonging to it, such as newspaper correspondents and reporters, sutlers and contractors, who fall into the enemy's hands and whom the latter thinks expedient to detain, are entitled to be treated as prisoners of war, provided they are in possession of a certificate from the military authorities of the army which they were accompanying.

ART. XIV. An inquiry office for prisoners of war is instituted on the commencement of hostilities in each of the belligerent States, and, when necessary, in neutral countries which have received belligerents in their territory. It is the function of this office to reply to all inquiries about the prisoners. It receives from the various services concerned full information respecting internments and transfers, releases on parole, exchanges, escapes, admissions into hospitals, deaths, as well as other information necessary to enable it to make out and keep up to date an individual return for each prisoner of war. The office must state in this return the regimental number, name and surname, age, place of origin, rank, unit, wounds, date and place of capture, internment, wounding, and death, as well as any observations of a special character. The individual return shall be sent to the Government of the other belligerent after the conclusion of peace.

It is likewise the function of the inquiry office to receive and collect all objects of personal use, valuables, letters, etc., found on the field of battle or left by prisoners who have been released on parole, or exchanged, or who have escaped, or died in hospitals or ambulances, and to forward them to those concerned.

ART. XV. Relief societies for prisoners of war, which are properly constituted in accordance with the laws of their country and with the object of serving as the channel for charitable effort shall receive from the belligerents, for themselves, and their duly accredited agents every facility for the efficient performance of their humane task within the bounds imposed by military necessities and administrative regulations. Agents of these societies may be admitted to the places of internment for the purpose of distributing relief, as also to the halting places of repatriated prisoners, if furnished with a personal permit by the military authorities, and on giving an undertaking in writing to comply with all measures of order and police which the latter may issue.

ART. XVI. Inquiry offices enjoy the privilege of free postage. Letters, money orders, and valuables, as well as parcels by post, intended for prisoners of war, or dispatched by them, shall be exempt from all postal duties in the countries of origin and destination, as well as in the countries they pass through.

Presents and relief in kind for prisoners of war shall be admitted free of all import or other duties, as well as of payments for carriage by the State railways.

ART. XVII. Officers taken prisoners shall receive the same rate of pay as officers of corresponding rank in the country where they are detained, the amount to be ultimately refunded by their own Government.

ART. XVIII. Prisoners of war shall enjoy complete liberty in the exercise of their religion, including attendance at the services of whatever church they may belong to, on the sole condition that they comply with the measures of order and police issued by the military authorities.

ART. XIX. The wills of prisoners of war are received or drawn up in the same way as for soldiers of the national army.

The same rule shall be observed regarding death certificates as well as for the burial of prisoners of war, due regard being paid to their grade and rank.

ART. XX. After the conclusion of peace, the repatriation of prisoners of war shall be carried out as quickly as possible.

CHAPTER III.—*The sick and wounded.*

ART. XXI. The obligations of belligerents with regard to the sick and wounded are governed by the Geneva Convention.

SECTION II.—HOSTILITIES

CHAPTER I.—*Means of injuring the enemy, sieges, and bombardments.*

ART. XXII. The right of belligerents to adopt means of injuring the enemy is not unlimited.

ART. XXIII. In addition to the prohibitions provided by special conventions, it is especially forbidden—

(a) To employ poison or poisoned weapons;

(b) To kill or wound treacherously individuals belonging to the hostile nation or army;

(c) To kill or wound an enemy who, having laid down his arms, or having no longer means of defense, has surrendered at discretion;

(d) To declare that no quarter will be given;

(e) To employ arms, projectiles, or material calculated to cause unnecessary suffering;

(f) To make improper use of a flag of truce, of the national flag, or of the military insignia and uniform of the enemy, as well as the distinctive badges of the Geneva Convention;

(g) To destroy or seize the enemy's property, unless such destruction or seizure be imperatively demanded by the necessities of war;

(h) To declare abolished, suspended, or inadmissible in a court of law the rights and actions of the nationals of the hostile party.

A belligerent is likewise forbidden to compel the nationals of the hostile party to take part in the operations of war against their own country, even if they were in the belligerent's service before the commencement of the war.

ART. XXIV. Ruses of war and the employment of measures necessary for obtaining information about the enemy and the country are considered permissible.

ART. XXV. The attack or bombardment, by whatever means, of towns, villages, dwellings, or buildings which are undefended is prohibited.

ART. XXVI. The officer in command of an attacking force must, before commencing a bombardment, except in cases of assault, do all in his power to warn the authorities.

ART. XXVII. In sieges and bombardments all necessary steps must be taken to spare, as far as possible, buildings dedicated to religion, art, science, or charitable purposes, historic monuments, hospitals, and places where the sick and wounded are collected, provided that they are not being used at the time for military purposes.

It is the duty of the besieged to indicate the presence of such buildings or places by distinctive and visible signs, which shall be notified to the enemy beforehand.

ART. XXVIII. The pillage of a town or place, even when taken by assault, is prohibited.

CHAPTER II.—*Spies.*

ART. XXIX. A person can only be considered a spy when, acting clandestinely or on false pretenses, he obtains or endeavors to obtain information in the zone of operations of a belligerent, with the intention of communicating it to the hostile party.

Thus, soldiers not wearing a disguise who have penetrated into the zone of operations of the hostile army, for the purpose of obtaining information, are not considered spies. Similarly, the following are not considered spies: Soldiers and civilians, carrying out their mission openly, intrusted with the delivery of despatches intended either for their own army or for the enemy's army. To this class belong likewise persons sent in balloons for the purpose of carrying despatches and, generally, of maintaining communications between the different parts of an army or a territory.

ART. XXX. A spy taken in the act shall not be punished without previous trial.

ART. XXXI. A spy who, after rejoining the army to which he belongs, is subsequently captured by the enemy, is treated as a prisoner of war, and incurs no responsibility for his previous acts of espionage.

CHAPTER III.—*Flags of truce.*

ART. XXXII. A person is regarded as bearing a flag of truce who has been authorized by one of the belligerents to enter into communication with the other, and who advances bearing a white flag. He has a right to inviolability, as well as the trumpeter, bugler or drummer, the flag-bearer and interpreter who may accompany him.

ART. XXXIII. The commander to whom a flag of truce is sent is not in all cases obliged to receive it.

He may take all the necessary steps to prevent the envoy taking advantage of his mission to obtain information.

In case of abuse, he has the right to detain the envoy temporarily.

ART. XXXIV. The envoy loses his right of inviolability if it is proved in a clear and incontestable manner that he has taken advantage of his privileged position to provoke or commit an act of treachery.

CHAPTER IV.—*Capitulations.*

ART. XXXV. Capitulations agreed upon between the contracting parties must take into account the rules of military honour.

Once settled, they must be scrupulously observed by both parties.

CHAPTER V.—*Armistices.*

ART. XXXVI. An armistice suspends military operations by mutual agreement between the belligerent parties. If its duration is not defined, the belligerent parties may resume operations at any time, provided always that the enemy is warned within the time agreed upon, in accordance with the terms of the armistice.

ART. XXXVII. An armistice may be general or local. The first suspends the military operations of the belligerent States everywhere; the second only between certain fractions of the belligerent armies and within a fixed radius.

ART. XXXVIII. An armistice must be notified officially and in good time to the competent authorities and to the troops. Hostilities are suspended immediately after the notification, or on the date fixed.

ART. XXXIX. It rests with the contracting parties to settle, in the terms of the armistice, what communications may be held in the theater of war with the inhabitants and between the inhabitants of one belligerent State and those of the other.

ART. XL. Any serious violation of the armistice by one of the parties gives the other party the right of denouncing it, and even, in cases of urgency, of recommencing hostilities immediately.

ART. XLI. A violation of the terms of the armistice by private persons acting on their own initiative only entitles the injured party to demand the punishment of the offenders or, if necessary, compensation for the losses sustained.

SECTION III.—MILITARY AUTHORITY OVER THE TERRITORY OF THE HOSTILE STATE

ART. XLII. Territory is considered occupied when it is actually placed under the authority of the hostile army.

The occupation extends only to the territory where such authority has been established and can be exercised.

ART. XLIII. The authority of the legitimate power having in fact passed into the hands of the occupant, the latter shall take all the measures in his power to restore, and ensure, as far as possible, public order and

safety, while respecting, unless absolutely prevented, the laws in force in the country.

ART. XLIV. A belligerent is forbidden to force the inhabitants of territory occupied by it to furnish information about the army of the other belligerent, or about its means of defense.

ART. XLV. It is forbidden to compel the inhabitants of occupied territory to swear allegiance to the hostile power.

ART. XLVI. Family honour and rights, the lives of persons, and private property, as well as religious convictions and practice, must be respected.

Private property cannot be confiscated.

ART. XLVII. Pillage is formally forbidden.

ART. XLVIII. If, in the territory occupied, the occupant collects the taxes, dues, and tolls imposed for the benefit of the State, he shall do so, as far as is possible, in accordance with the rules of assessment and incidence in force, and shall in consequence be bound to defray the expenses of the administration of the occupied territory to the same extent as the legitimate Government was so bound.

ART. XLIX. If, in addition to the taxes mentioned in the above article, the occupant levies other money contributions in the occupied territory, this shall only be for the needs of the army or of the administration of the territory in question.

ART. L. No general penalty, pecuniary or otherwise, shall be inflicted upon the population on account of the acts of individuals for which they cannot be regarded as jointly and severally responsible.

ART. LI. No contribution shall be collected except under a written order, and on the responsibility of a commander in chief.

The collection of the said contribution shall only be effected as far as possible in accordance with the rules of assessment and incidence of the taxes in force.

For every contribution a receipt shall be given to the contributors.

ART. LII. Requisitions in kind and services shall not be demanded from municipalities or inhabitants except for the needs of the army of occupation. They shall be in proportion to the resources of the country, and of such a nature as not to involve the inhabitants in the obligation of taking part in military operations against their own country.

Such requisitions and services shall only be demanded on the authority of the commander in the locality occupied.

Contributions in kind shall as far as possible be paid for in cash; if not, a receipt shall be given and the payment of the amount due shall be made as soon as possible.

ART. LIII. An army of occupation can only take possession of cash, funds, and realizable securities which are strictly the property of the State, depots of arms, means of transport, stores and supplies, and, generally, all movable property belonging to the State which may be used for military operations.

All appliances, whether on land, at sea, or in the air, adapted for the transmission of news, or for the transport of persons or things, exclusive of cases governed by naval law, depots of arms, and, generally, all kinds of ammunition of war, may be seized, even if they belong to private individuals, but must be restored and compensation fixed when peace is made.

ART. LIV. Submarine cables connecting an occupied territory with a neutral territory shall not be seized or destroyed except in the case of absolute necessity. They must likewise be restored and compensation fixed when peace is made.

ART. LV. The occupying State shall be regarded only as administrator and usufructuary of public buildings, real estate, forests, and agricultural estates belonging to the hostile State, and situated in the occupied country. It must safeguard the capital of these properties and administer them in accordance with the rules of usufruct.

ART. LVI. The property of municipalities, that of institutions dedicated to religion, charity and education, the arts and sciences, even when State property, shall be treated as private property.

All seizure of, destruction or wilful damage done to institutions of this character, historic monuments, works of art and science, is forbidden and should be made the subject of legal proceedings.

CONVENTION RESPECTING THE RIGHTS AND DUTIES OF NEUTRAL POWERS AND PERSONS IN WAR ON LAND

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CHAPTER I.—*The rights and duties of neutral powers.*

ART. I. The territory of neutral powers is inviolable.

ART. II. Belligerents are forbidden to move troops or convoys of either munitions of war or supplies across the territory of a neutral power.

ART. III. Belligerents are likewise forbidden to:

(a) Erect on the territory of a neutral power a wireless-telegraphy station or other apparatus for the purpose of communicating with belligerent forces on land or sea;

(b) Use any installation of this kind established by them before the war on the territory of a neutral power for purely military purposes, and which has not been opened for the service of public messages.

ART. IV. Corps of combatants cannot be formed nor recruiting agencies opened on the territory of a neutral power to assist the belligerents.

ART. V. A neutral power must not allow any of the acts referred to in Articles II to IV to occur on its territory.

It is not called upon to punish acts in violation of its neutrality unless the said acts have been committed on its own territory.

ART. VI. The responsibility of a neutral power is not engaged by the fact of persons crossing the frontier separately to offer their services to one of the belligerents.

ART. VII. A neutral power is not called upon to prevent the export or transport on behalf of one or other of the belligerents, of arms, munitions of war, or, in general, of anything which can be of use to an army or a fleet.

ART. VIII. A neutral power is not called upon to forbid or restrict the use on behalf of the belligerents of telegraph or telephone cables or of wireless telegraphy apparatus belonging to it or to companies or private individuals.

ART. IX. Every measure of the restriction or prohibition taken by a neutral power in regard to the matters referred to in Articles VII and VIII must be impartially applied by it to both belligerents.

A neutral power must see to the same obligation being observed by companies or private individuals owning telegraph or telephone cables or wireless telegraphy apparatus.

ART. X. The fact of a neutral power resisting, even by force, attempts to violate its neutrality cannot be regarded as a hostile act.

CHAPTER II.—*Belligerents interned and wounded tended in neutral territory.*

ART. XI. A neutral power which receives on its territory troops belonging to the belligerent armies shall intern them, as far as possible, at a distance from the theater of war.

It may keep them in camps and even confine them in fortresses or in places set apart for this purpose.

It shall decide whether officers can be left at liberty on giving their parole not to leave the neutral territory without permission.

ART. XII. In the absence of a special convention to the contrary, the neutral power shall supply the interned with the food, clothing, and relief required by humanity.

At the conclusion of peace the expenses caused by the internment shall be made good.

ART. XIII. A neutral power which receives escaped prisoners of war shall leave them at liberty. If it allows them to remain in its territory it may assign them a place of residence.

The same rule applies to prisoners of war brought by troops taking refuge in the territory of a neutral power.

ART. XIV. A neutral power may authorize the passage into its territory of the sick and wounded belonging to the belligerent armies, on condition that the trains bringing them shall carry neither personnel nor war material. In such a case, the neutral power is bound to take whatever measures of safety and control are necessary for the purpose.

The sick or wounded brought under these conditions into neutral territory by one of the belligerents, and belonging to the hostile pa ty, must be guarded by the neutral power so as to insure their not taking part again in the military operations. The same duty shall devolve on the neutral State with regard to wounded or sick of the other army who may be committed to its care.

ART. XV. The Geneva Convention applies to sick and wounded interned in neutral territory.

CHAPTER III.—*Neutral persons.*

ART. XVI. The nationals of a State which is not taking part in the war are considered as neutrals.

ART. XVII. A neutral cannot avail himself of his neutrality:

(*a*) If he commits hostile acts against a belligerent;

(*b*) If he commits acts in favor of a belligerent, particularly if he voluntarily enlists in the ranks of the armed force of one of the parties.

In such a case, the neutral shall not be more severely treated by the belligerent as against whom he has abandoned his neutrality than a national of the other belligerent State could be for the same act.

ART. XVIII. The following acts shall not be considered as committed in favor of one belligerent in the sense of Article XVII, letter (*b*):

(*a*) Supplies furnished or loans made to one of the belligerents, provided that the person who furnishes the supplies or who makes the loans lives neither in the territory of the other party nor in the territory occupied by him, and that the supplies do not come from these territories.

(*b*) Services rendered in matters of police or civil administration.

CHAPTER. IV. *Railway material.*

ART. XIX. Railway material coming from the territory of neutral powers, whether it be the property of the said powers or of companies or private persons, and recognizable as such, shall not be requisitioned or utilized by a belligerent except where and to the extent that it is absolutely necessary. It shall be sent back as soon as possible to the country of origin.

A neutral power may likewise, in case of necessity, retain and utilize to an equal extent material coming from the territory of the belligerent power.

Compensation shall be paid by one party or the other in proportion to the material used, and to the period of usage.

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CONVENTION RELATIVE TO THE LAYING OF AUTOMATIC SUBMARINE CONTACT MINES

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ART. I. It is forbidden:

1. To lay unanchored automatic contact mines, except when they are so constructed as to become harmless one hour at most after the person who laid them ceases to control them;

2. To lay anchored automatic contact mines which do not become harmless as soon as they have broken loose from their moorings;

3. To use torpedoes which do not become harmless when they have missed their mark.

ART. II. It is forbidden to lay automatic contact mines off the coast and ports of the enemy, with the sole object of intercepting commercial shipping.

ART. III. When anchored automatic contact mines are employed, every possible precaution must be taken for the security of peaceful shipping.

The belligerents undertake to do their utmost to render these mines harmless within a limited time, and, should they cease to be under surveillance, to notify the danger zones as soon as military exigencies permit, by a notice addressed to shipowners, which must also be communicated to the Governments through the diplomatic channel.

ART. IV. Neutral powers which lay automatic contact mines off their coasts must observe the same rules and take the same precautions as are imposed on belligerents.

The neutral power must inform shipowners, by a notice issued in advance, where automatic contact mines have been laid.

This notice must be communicated at once to the Governments through the diplomatic channel.

ART. V. At the close of the war, the contracting powers undertake to do their utmost to remove the mines which they had laid, each power removing its own mines.

As regards anchored automatic contact mines laid by one of the belligerents off the coast of the other, their position must be notified to the other party by the power which laid them, and each power must proceed with the least possible delay to remove the mines in its own waters.

ART. VI. The contracting powers which do not at present own perfected mines of the pattern contemplated in the present convention, and which, consequently, could not at present carry out the rules laid down in Articles I and III, undertake to convert the *matériel* of their mines as soon as possible, so as to bring it into conformity with the foregoing requirements.

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DECLARATION PROHIBITING THE DISCHARGE OF PROJECTILES AND EXPLOSIVES FROM BALLOONS

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The contracting powers agree to prohibit, for a period extending to the close of the third peace conference, the discharge of projectiles and explosives from balloons or by other new methods, of a similar nature.

The present declaration is only binding on the contracting powers in case of war between two or more of them.

It shall cease to be binding from the time when, in a war between the contracting powers, one of the belligerents is joined by a noncontracting power.

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c. International Red Cross Convention.
(Revision of the Geneva Convention.)

INTERNATIONAL RED CROSS CONVENTION

The International Convention for the Amelioration of the Condition of the Wounded and Sick in Armies in the Field, Geneva, 1906, is as follows:

CHAPTER I.—*The wounded and sick.*

ART. I. Officers and soldiers, and other persons officially attached to armies, shall be respected and taken care of when wounded or sick, by the belligerent in whose power they may be, without distinction of nationality.

Nevertheless, a belligerent who is compelled to abandon sick or wounded to the enemy shall, as far as military exigencies permit, leave with them a portion of his medical personnel and material to contribute to the care of them.

ART. II. Except as regards the treatment to be provided for them in virtue of the preceding article, the wounded and sick of an army who fall into the hands of an enemy are prisoners of war, and the general provisions of international law concerning prisoners are applicable to them.

Belligerents are, however, free to arrange with one another such exceptions and mitigations with reference to sick and wounded prisoners as they may judge expedient; in particular they will be at liberty to agree—

To restore to one another the wounded left on the field after a battle;

To repatriate any wounded and sick whom they do not wish to retain as prisoners, after rendering them fit for removal or after recovery;

To hand over to a neutral State, with the latter's consent, the enemy's wounded and sick to be interned by the neutral State until the end of hostilities.

ART. III. After each engagement the commander in possession of the field shall take measures to search for the wounded, and to insure protection against pillage and maltreatment both for the wounded and for the dead.

He shall arrange that a careful examination of the bodies is made before the dead are buried or cremated.

ART. IV. As early as possible each belligerent shall send the authorities of the country or army to which they belong the military identification marks or tokens found on the dead, and a nominal roll of the wounded or sick who have been collected by him.

The belligerents shall keep each other mutually informed of any interments and changes, as well as of admissions into hospitals and deaths among the wounded and sick in their hands. They shall collect all the articles of personal use, valuables, letters, etc., which are found on the field of battle or left by the wounded or sick who have died in the medical establishments or units, in order that such objects may be transmitted to the persons interested by the authorities of their own country.

ART. V. The competent military authority may appeal to the charitable zeal of the inhabitants to collect and take care of, under his direction, the wounded or sick of armies, granting to those who respond to the appea special protection and certain immunities.

CHAPTER II.—*Medical units and establishments.*

ART. VI. Mobile medical units (that is to say, those which are intended to accompany armies into the field) and the fixed establishments of the medical service shall be respected and protected by the belligerents.

ART. VII. The protection to which medical units and establishments are entitled ceases if they are made use of to commit acts harmful to the enemy.

ART. VIII. The following facts are not considered to be of a nature to deprive a medical unit or establishment of the protection guaranteed by Article VI—

1. That the personnel of the unit or of the establishment is armed, and that it uses its arms for its own defense or for that of the sick and wounded under its charge.

2. That in default of armed orderlies the unit or establishment is guarded by a piquet or by sentinels furnished with an authority in due form.

3. That weapons, and cartridges, taken from the wounded and not yet handed over to the proper department are found in the unit or establishment.

CHAPTER III.—*Personnel.*

ART. IX. The personnel engaged exclusively in the collection, transport, and treatment of the wounded and the sick, as well as in the administration of medical units and establishments, and the chaplains attached to armies, shall be respected and protected under all circumstances. If they fall into the hands of the enemy they shall not be treated as prisoners of war.

These provisions apply to the guard of medical units and establishments under the circumstances indicated in Article VIII (2).

ART. X. The personnel of voluntary aid societies, duly recognized and authorized by their Government, who may be employed in the medical units and establishments of armies, is placed on the same footing as the personnel referred to in the preceding article, provided always that the first-mentioned personnel shall be subject to military law and regulations.

Each State shall notify to the other, either in time of peace or at the commencement of, or during the course of hostilities, but in every case before actually employing them, the names of the societies which it has authorized, under its responsibility, to render assistance to the regular medical service of its armies.

ART. XI. A recognized society of a neutral country can only afford the assistance of its medical personnel and units to a belligerent with the previous consent of its own Government and the authorization of the belligerent concerned.

A belligerent who accepts such assistance is bound to notify the fact to his adversary before making any use of it.

ART. XII. The persons designated in Articles IX, X, and XI, after they have fallen into the hands of the enemy, shall continue to carry on their duties under his direction.

When their assistance is no longer indispensable, they shall be sent back to the army or to their country at such time and by such route as may be compatible with military exigencies.

They shall then take with them such effects, instruments, arms, and horses as are their private property.

ART. XIII. The enemy shall secure to the persons mentioned in Article IX while in his hands, the same allowances and the same pay as are granted to the persons holding the same rank in his own army.

CHAPTER IV.—*Material.*

ART. XIV. If mobile medical units fall into the hands of the enemy they shall retain their material, including their teams, irrespectively of the means of transport and the drivers employed.

Nevertheless, the competent military authority shall be free to use the material for the treatment of the wounded and sick. It shall be restored under the conditions laid down for the medical personnel, and so far as possible at the same time.

ART. XVI. The buildings and material of fixed establishments remain subject to the laws of war, but may not be diverted from their purpose so long as they are necessary for the wounded and the sick.

Nevertheless, the commanders of troops in the field may dispose of them, in case of urgent military necessity, provided they make previous arrangements for the welfare of the wounded and sick who are found there.

ART. XVI. The material of voluntary aid societies which are admitted to the privileges of the convention under the conditions laid down therein is considered private property, and, as such, to be respected under all circumstances, saving only the right of requisition recognized for belligerents in accordance with the laws and customs of war.

CHAPTER V.—*Convoys of evacuation.*

ART. XVII. Convoys of evacuation shall be treated like mobile medical units, subject to the following special provisions—

1. A belligerent intercepting a convoy may break it up if military exigencies demand, provided he takes charge of the sick and wounded who are in it.

2. In this case, the obligation to send back the medical personnel, provided for in Article XII, shall be extended to the whole of the military personnel detailed for the transport or the protection of the convoy, and furnished with an authority in due form to that effect.

The obligation to restore the medical material, provided for in Article XIV, shall apply to railway trains and boats used in internal navigation, which are specially arranged for evacuations, as well as to the material belonging to the medical service for fitting up ordinary vehicles, trains, and boats.

Military vehicles, other than those of the medical service, may be captured with their teams.

The civilian personnel and the various means of transport obtained by requisition, including railway material and boats used for convoy, shall be subject to the general rules of international law.

CHAPTER VI.—*The distinctive emblem.*

ART. XVIII. As a compliment to Switzerland, the heraldic emblem of the red cross on a white ground, formed by reversing the Federal colors, is retained as the emblem and distinctive sign of the medical service of armies.

ART. XIX. With the permission of the competent military authority this emblem shall be shown on the flags and armlets (brassards), as well as on all the material belonging to the medical service.

ART. XX. The personnel protected in pursuance of Articles IX (par. 1), X, and XI, shall wear, fixed to the left arm, an armlet (brassard), with a red cross on a white ground delivered and stamped by the competent military authority, and accompanied by a certificate of identity in the case of persons who are attached to the medical service of armies, but who have not a military uniform.

ART. XXI. The distinctive flag of the convention shall only be hoisted over those medical units and establishments which are entitled to be respected under the convention, and with the consent of the military authorities. It must be accompanied by the national flag of the belligerent to whom the unit or establishment belongs.

Nevertheless, medical units which have fallen into the hands of the enemy, so long as they are in that situation, shall not fly any other flag than that of the Red Cross.

ART. XXII. The medical units belonging to neutral countries which may be authorized to afford their services under the conditions laid down in Article XI shall fly, along with the flag of the convention, the national flag of the belligerent to whose army they are attached.

The provisions of the second paragraph of the preceding article are applicable to them.

ART. XXIII. The emblem of the red cross on a white ground and the words "Red Cross" or "Geneva Cross" shall not be used, either in time of

peace or in time of war, except to protect or to indicate the medical units and establishments and the personnel and material protected by the convention.

CHAPTER VII.—*Application and carrying out of the convention.*

ART. XXIV. The provisions of the present convention are only binding upon the contracting powers in the case of war between two or more of them. These provisions shall cease to be binding from the moment when one of the belligerent powers is not a party to the convention.

ART. XXV. The commanders in chief of belligerent armies shall arrange the details for carrying out the preceding articles, as well as for cases not provided for, in accordance with the instructions of their respective Governments and in conformity with the general principles of the present convention.

ART. XXVI. The signatory Governments will take the necessary measures to instruct their troops, especially the personnel protected, in the provisions of the present convention, and to bring them to the notice of the civil population.

CHAPTER VIII.—*Prevention of abuses and infractions.*

ART. XXVII. The signatory Governments, in countries the legislation of which is not at present adequate for the purpose, undertake to adopt or to propose to their legislative bodies such measures as may be necessary to prevent at all times the employment of the emblem or the name of Red Cross or Geneva Cross by private individuals or by societies other than those which are entitled to do so under the present convention and in particular for commercial purposes as a trademark or trading mark.

The prohibition of the employment of the emblem or the name in question shall come into operation from the date fixed by each legislature, and at the latest, five years after the present convention comes into force. From that date it shall no longer be lawful to adopt a trademark or trading mark contrary to this prohibition.

ART. XXVIII. The signatory Governments also undertake to adopt, or to propose to their legislative bodies, should their military law be insufficient for the purpose, the measures necessary for the repression in time of war of individual acts of pillage and maltreatment of the wounded and sick of armies, as well as for the punishment, as an unlawful employment of military insignia, or the improper use of the Red Cross flag and armlet (brassard) by officers and soldiers or private individuals not protected by the present convention.

They shall communicate to one another, through the Swiss Federal Council, the provisions relative to these measures of repression at the latest within five years from the ratification of the present convention.

General provisions

ART. XXIX. The present convention shall be ratified as soon as possible. The ratification shall be deposited at Berne.

When each ratification is deposited a *procés-verbal* shall be drawn up, and a copy thereof certified as correct shall be forwarded through the diplomatic channel to all the contracting powers.

ART. XXX. The present convention shall come into force for each power six months after the date of the deposit of its ratification.

ART. XXXI. The present convention, duly ratified, shall replace the convention of the 22d August, 1864, in relations between the contracting States.

The convention of 1864 remains in force between such of the parties who signed it who may not likewise ratify the present convention.

ART. XXXII. The present convention may be signed until the 31st December next by the powers represented at the conference which was

opened at Geneva on the 11th June, 1906, as also by the powers, not represented at that conference, wich signed the convention of 1864.

Such of the aforesaid powers as shall have not signed the present convention by the 31st December, 1906, shall remain free to accede to it subsequently. They shall notify their accession by means of a written communication addressed to the Swiss Federal Council, and communicated by the latter to all the contracting powers.

Other powers may apply to accede in the same manner, but their request shall only take effect if within a period of one year from the notification of it to the Federal Council no objection to it reaches the council from any of the contracting powers.

ART. XXXIII. Each of the contracting powers shall be at liberty to denounce the present convention. The denunciation shall not take effect until one year after the written notification of it has reached the Swiss Federal Council. The council shall immediately communicate the notification to all the other contracting parties.

The denunciation shall only affect the power which has notified it.

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*d. General Report of the Commission of Jurists at The Hague, 1923.**

GENERAL REPORT OF THE COMMISSION OF JURISTS AT THE HAGUE, 1923

PART I

RULES FOR THE CONTROL OF RADIO IN TIME OF WAR

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ARTICLE 1

In time of war the working of radio stations shall continue to be organized, as far as possible, in such manner as not to disturb the services of other radio stations. This provision does not apply as between the radio stations of opposing belligerents.

ARTICLE 2

Belligerent and neutral Powers may regulate or prohibit the operation of radio stations within their jurisdiction.

ARTICLE 3

The erection or operation by a belligerent Power or its agents of radio stations within neutral jurisdiction constitutes a violation of neutrality on the part of such belligerent as well as on the part of the neutral Power which permits the erection or operation of such stations.

ARTICLE 4

A neutral Power is not called upon to restrict or prohibit the use of radio stations which are located within its jurisdiction, except so far as may be necessary to prevent the transmission of information destined for a belligerent concerning military forces or military operations and except as prescribed by Article 5.

All restrictive or prohibitive measures taken by a neutral Power shall be applied impartially by it to the belligerents.

*The rules suggested in this report pertain to the use of radio and aircraft in time of war. They are not yet a part of the rules of war. Not having as yet been made the subject of treaty or other agreement, they are not at present binding upon any nation.

ARTICLE 5

Belligerent mobile radio stations are bound within the jurisdiction of a neutral state to abstain from all use of their radio apparatus. Neutral governments are bound to employ the means at their disposal to prevent such use.

ARTICLE 6

1. The transmission by radio by a vessel or an aircraft, whether enemy or neutral, when on or over the high seas of military intelligence for the immediate use of a belligerent is to be deemed a hostile act and will render the vessel or aircraft liable to be fired upon.

2. A neutral vessel or neutral aircraft which transmits when on or over the high seas information destined for a belligerent concerning military operations or military forces shall be liable to capture. The prize court may condemn the vessel or aircraft if it considers that the circumstances justify condemnation.

3. Liability to capture of a neutral vessel or aircraft on account of the acts referred to in paragraphs 1 and 2 is not extinguished by the conclusion of the voyage or flight on which the vessel or aircraft was engaged at the time, but shall subsist for a period of one year after the act complained of.

ARTICLE 7

In case a belligerent commanding officer considers that the success of the operation in which he is engaged may be prejudiced by the presence of vessels or aircraft equipped with radio installations in the immediate vicinity of his armed forces or by the use of such installations therein, he may order neutral vessels or neutral aircraft on or over the high seas:

1. To alter their course to such an extent as will be necessary to prevent their approaching the armed forces operating under his command; or

2. Not to make use of their radio transmitting apparatus while in the immediate vicinity of such forces.

A neutral vessel or neutral aircraft, which does not conform to such direction of which it has had notice, exposes itself to the risk of being fired upon. It will also be liable to capture, and may be condemned if the prize court considers that the circumstances justify condemnation.

ARTICLE 8

Neutral mobile radio stations shall refrain from keeping any record of radio messages received from belligerent military radio stations, unless such messages are addressed to themselves.

Violation of this rule will justify the removal by the belligerent of the records of such intercepted messages.

ARTICLE 9

Belligerents are under obligation to comply with the provisions of international conventions in regard to distress signals and distress messages so far as their military operations permit.

Nothing in these rules shall be understood to relieve a belligerent from such obligation or to prohibit the transmission of distress signals, distress messages and messages which are indispensable to the safety of navigation.

ARTICLE 10

The perversion of radio distress signals and distress messages prescribed by international conventions to other than their normal and legitimate purposes constitutes a violation of the laws of war and renders the perpetrator personnally responsible under international law.

ARTICLE 11

Acts not otherwise constituting espionage are not espionage by reason of their involving violation of these rules.

ARTICLE 12

Radio operators incur no personal responsibility from the mere fact of carrying out the orders which they receive in the performance of their duties as operators.

PART II

RULES OF AERIAL WARFARE

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CHAPTER I

Applicability: Classification and Marks

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ARTICLE 1

The rules of aerial warfare apply to all aircraft, whether lighter or heavier than air, irrespective of whether they are, or are not, capable of floating on the water.

ARTICLE 2

The following shall be deemed to be public aircraft:

(a) Military aircraft;

(b) Non-military aircraft exclusively employed in the public service.

All other aircraft shall be deemed to be private aircraft.

ARTICLE 3

A military aircraft shall bear an external mark indicating its nationality and military character.

ARTICLE 4

A public non-military aircraft employed for customs or police purposes shall carry papers evidencing the fact that it is exclusively employed in the public service. Such an aircraft shall bear an external mark indicating its nationality and its public non-military character.

ARTICLE 5

Public non-military aircraft other than those employed for customs or police purposes shall in time of war bear the same external marks, and for the purposes of these rules shall be treated on the same footing, as private aircraft.

ARTICLE 6

Aircraft not comprised in Articles 3 and 4 and deemed to be private aircraft shall carry such papers and bear such external marks as are required by the rules in force in their own country. These marks must indicate their nationality and character.

ARTICLE 7

The external marks required by the above articles shall be so affixed that they cannot be altered in flight. They shall be as large as is practicable and shall be visible from above, from below and from each side.

ARTICLE 8

The external marks, prescribed by the rules in force in each state, shall be notified promptly to all other Powers.

Modifications adopted in time of peace of the rules prescribing external marks shall be notified to all other Powers before they are brought into force.

Modifications of such rules adopted at the outbreak of war or during hostilities shall be notified to each Power as soon as possible to all other Powers and at latest when they are communicated to its own fighting forces.

ARTICLE 9

A belligerent non-military aircraft, whether public or private, may be converted into a military aircraft, provided that the conversion is effected within the jurisdiction of the belligerent state to which the aircraft belongs and not on the high seas.

ARTICLE 10

No aircraft may possess more than one nationality.

CHAPTER II

General Principles

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ARTICLE 11

Outside the jurisdiction of any state, belligerent or neutral, all aircraft shall have full freedom of passage through the air and of alighting.

ARTICLE 12

In time of war any state, whether belligerent or neutral, may forbid or regulate the entrance, movement or sojourn of aircraft within its jurisdiction.

CHAPTER III

Belligerents

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ARTICLE 13

Military aircraft are alone entitled to exercise belligerent rights.

ARTICLE 14

A military aircraft shall be under the command of a person duly commissioned or enlisted in the military service of the state; the crew must be exclusively military.

ARTICLE 15

Members of the crew of a military aircraft shall wear a fixed distinctive emblem of such character as to be recognizable at a distance in case they become separated from their aircraft.

ARTICLE 16

No aircraft other than a belligerent military aircraft shall engage in hostilities in any form.

The term "hostilities" includes the transmission during flight of military intelligence for the immediate use of a belligerent.

No private aircraft, when outside the jurisdiction of its own country, shall be armed in time of war.

ARTICLE 17

The principles laid down in the Geneva Convention, 1906, and the convention for Adaptation of the said Convention to Maritime War (No. X of 1907) shall apply to aerial warfare and to flying ambulances, as well as to the control over flying ambulances exercised by a belligerent commanding officer.

In order to enjoy the protection and privileges allowed to mobile medical units by the Geneva Convention, 1906, flying ambulances must bear the distinctive emblem of the Red Cross in addition to the usual distinguishing marks.

CHAPTER IV

Hostilities

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ARTICLE 18

The use of tracer, incendiary or explosive projectiles by or against aircraft is not prohibited.

This provision applies equally to states which are parties to the Declaration of St. Petersburg, 1868, and to those which are not.

ARTICLE 19

The use of false external marks is forbidden.

ARTICLE 20

When an aircraft has been disabled, the occupants when endeavoring to escape by means of a parachute must not be attacked in the course of their descent.

ARTICLE 21

The use of aircraft for the purpose of disseminating propaganda shall not be treated as an illegitimate means of warfare.

Members of the crews of such aircraft must not be deprived of their rights as prisoners of war on the charge that they have committed such an act.

Bombardment

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ARTICLE 22

Aerial bombardment for the purpose of terrorizing the civilian population, of destroying or damaging private property not of military character, or of injuring non-combatants is prohibited.

ARTICLE 23

Aerial bombardment for the purpose of enforcing compliance with requisitions in kind or payment of contributions in money is prohibited.

ARTICLE 24

(1) Aerial bombardment is legitimate only when directed at a military objective, that is to say, an object of which the destruction or injury would constitute a distinct military advantage to the belligerent.

(2) Such bombardment is legitimate only when directed exclusively at the following objectives: military forces; military works; military establishments or depots; factories constituting important and well-known centers engaged in the manufacture of arms, ammunition or distinctively military supplies; lines of communication or transportation used for military purposes.

(3) The bombardment of cities, towns, villages, dwellings or buildings not in the immediate neighborhood of the operations of land forces is prohibited. In cases where the objectives specified in paragraph 2 are so situated that they cannot be bombarded without the indiscriminate bombardment of the civilian population, the aircraft must abstain from bombardment.

(4) In the immediate neighborhood of the operations of land forces, the bombardment of cities, towns, villages, dwellings or buildings is legitimate provided that there exists a reasonable presumption that the military concentration is sufficiently important to justify such bombardment, having regard to the danger thus caused to the civilian population.

(5) A belligerent state is liable to pay compensation for injuries to person or to property caused by the violation by any of its officers or forces of the provisions of this article.

ARTICLE 25

In bombardment by aircraft, all necessary steps must be taken by the commander to spare as far as possible buildings dedicated to public worship, art, science, or charitable purposes, historic monuments, hospital ships, hospitals and other places where the sick and wounded are collected, provided such buildings, objects or places are not at the time used for military purposes. Such buildings, objects and places must by day be indicated by marks visible to aircraft. The use of marks to indicate other buildings, objects, or places than those specified above is to be deemed an act of perfidy. The marks used as aforesaid shall be in the case of buildings protected under the Geneva Convention the red cross on a white ground, and in the case of other protected buildings a large rectangular panel divided diagonally into two pointed triangular portions, one black and the other white.

A belligerent who desires to secure by night the protection for the hospitals and other privileged buildings above mentioned must take the necessary measures to render the special signs referred to sufficiently visible.

ARTICLE 26

The following special rules are adopted for the purpose of enabling states to obtain more efficient protection for important historic monuments situated within their territory, provided that they are willing to refrain from the use of such monuments and a surrounding zone for military purposes, and to accept a special regime for their inspection.

(1) A state shall be entitled, if it sees fit, to establish a zone of protection round such monuments situated in its territory. Such zones shall in time of war enjoy immunity from bombardment.

(2) The monuments round which a zone is to be established shall be notified to other Powers in peace time through the diplomatic channel; the notification shall also indicate the limits of the zones. The notification may not be withdrawn in time of war.

(3) The zone of protection may include, in addition to the area actually occupied by the monument or group of monuments, an outer zone, not

exceeding 500 metres in width, measured from the circumference of the said area.

(4) Marks clearly visible from aircraft either by day or by night will be employed for the purpose of ensuring the identification by belligerent airmen of the limits of the zones.

(5) The marks on the monuments themselves will be those defined in Article 25. The marks employed for indicating the surrounding zones will be fixed by each state adopting the provisions of this article, and will be notified to other powers at the same time as the monuments and zones are notified.

(6) Any abusive use of the marks indicating the zones referred to in paragraph 5 will be regarded as an act of perfidy.

(7) A state adopting the provisions of this article must abstain from using the monument and the surrounding zone for military purposes, or for the benefit in any way whatever of its military organization, or from committing within such monument or zone any act with a military purpose in view.

(8) An inspection committee consisting of three neutral representatives accredited to the state adopting the provisions of this article, or their delegates, shall be appointed for the purpose of ensuring that no violation is committed of the provisions of paragraph 7. One of the members of the committee of inspection shall be the representative (or his delegate) of the state to which has been entrusted the interests of the opposing belligerent.

Espionage

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ARTICLE 27

Any person on board a belligerent or neutral aircraft is to be deemed a spy only if acting clandestinely or on false pretences he obtains or seeks to obtain, while in the air, information within belligerent jurisdiction or in the zone of operations of a belligerent with the intention of communicating it to the hostile party.

ARTICLE 28

Acts of espionage committed after leaving the aircraft by members of the crew of an aircraft or by passengers transported by it are subject to the provisions of the Land Warfare Regulations.

ARTICLE 29

Punishment of the acts of espionage referred to in Articles 27 and 28 is subject to Articles 30 and 31 of the Land Warfare Regulations.

CHAPTER V

Military Authority over Enemy and Neutral Aircraft and Persons on Board

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ARTICLE 30

In case a belligerent commanding officer considers that the presence of aircraft is likely to prejudice the success of the operations in which he is engaged at the moment, he may prohibit the passing of neutral aircraft in the immediate vicinity of his forces or may oblige them to follow a particular route. A neutral aircraft which does not conform to such directions, of which it has had notice issued by the belligerent commanding officer, may be fired upon.

ARTICLE 31

In accordance with the principles of Article 53 of the Land Warfare Regulations, neutral private aircraft found upon entry in the enemy's jurisdiction by a belligerent occupying force may be requisitioned, subject to the payment of full compensation.

ARTICLE 32

Enemy public aircraft, other than those treated on the same footing as private aircraft, shall be subject to confiscation without prize proceedings.

ARTICLE 33

Belligerent non-military aircraft, whether public or private, flying within the jurisdiction of their own state, are liable to be fired upon unless they make the nearest available landing on the approach of enemy military aircraft.

ARTICLE 34

Belligerent non-military aircraft, whether public or private, are liable to be fired upon, if they fly (1) within the jurisdiction of the enemy, or (2) in the immediate vicinity thereof and outside the jurisdiction of their own state or (3) in the immediate vicinity of the military operations of the enemy by land or sea.

ARTICLE 35

Neutral aircraft flying within the jurisdiction of a belligerent, and warned of the approach of military aircraft of the opposing belligerent, must make the nearest available landing. Failure to do so exposes them to the risk of being fired upon.

ARTICLE 36

When an enemy military aircraft falls into the hands of a belligerent, the members of the crew and the passengers, if any, may be made prisoners of war.

The same rule applies to the members of the crew and the passengers, if any, of an enemy public non-military aircraft, except that in the case of public non-military aircraft devoted exclusively to the transport of passengers, the passengers will be entitled to be released unless they are in the service of the enemy, or are enemy nationals fit for military service.

If an enemy private aircraft falls into the hands of a belligerent, members of the crew who are enemy nationals or who are neutral nationals in the service of the enemy, may be made prisoners of war. Neutral members of the crew, who are not in the service of the enemy, are entitled to be released if they sign a written undertaking not to serve in any enemy aircraft while hostilities last. Passengers are entitled to be released unless they are in the service of the enemy or are enemy nationals fit for military service, in which cases they may be made prisoners of war.

Release may in any case be delayed if the military interests of the belligerent so require.

The belligerent may hold as prisoners of war any member of the crew or any passenger whose service in a flight at the close of which he has been captured has been of special and active assistance to the enemy.

The names of individuals released after giving a written undertaking in accordance with the third paragraph of this article will be notified to the opposing belligerent, who must not knowingly employ them in violation of their undertakings.

ARTICLE 37

Members of the crew of a neutral aircraft which has been detained by a belligerent shall be released unconditionally, if they are neutral nationals

and not in the service of the enemy. If they are enemy nationals or in the service of the enemy, they may be made prisoners of war.

Passengers are entitled to be released unless they are in the service of the enemy or are enemy nationals fit for military service, in which cases they may be made prisoners of war.

Release may in any case be delayed if the military interests of the belligerent so require.

The belligerent may hold as prisoners of war any member of the crew or any passenger whose service in a flight at the close of which he has been captured has been of special and active assistance to the enemy.

ARTICLE 38

Where under the provisions of Articles 36 and 37 it is provided that members of the crew or passengers may be made prisoners of war, it is to be understood that, if they are not members of the armed forces, they shall be entitled to treatment not less favorable than that accorded to prisoners of war.

CHAPTER VI

Belligerent Duties towards Neutral States and Neutral Duties towards Belligerent States

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ARTICLE 39

Belligerent aircraft are bound to respect the rights of neutral Powers and to abstain within the jurisdiction of a neutral state from the commission of any act which it is the duty of that state to prevent.

ARTICLE 40

Belligerent military aircraft are forbidden to enter the jurisdiction of a neutral state.

ARTICLE 41

Aircraft on board vessels of war, including aircraft-carriers, shall be regarded as part of such vessel.

ARTICLE 42

A neutral government must use the means at its disposal to prevent the entry within its jurisdiction of belligerent military aircraft and to compel them to alight if they have entered such jurisdiction.

A neutral government shall use the means at its disposal to intern any belligerent military aircraft which is within its jurisdiction after having alighted for any reason whatsoever, together with its crew and the passengers, if any.

ARTICLE 43

The personnel of a disabled belligerent military aircraft rescued outside neutral waters and brought into the jurisdiction of a neutral state by a neutral military aircraft and there landed shall be interned.

ARTICLE 44

The supply in any manner, directly or indirectly, by a neutral government to a belligerent Power of aircraft, parts of aircraft, or material, supplies or munitions required for aircraft is forbidden.

ARTICLE 45

Subject to the provisions of Article 46, a neutral Power is not bound to prevent the export or transit on behalf of a belligerent of aircraft, parts of aircraft, or material, supplies or munitions for aircraft.

ARTICLE 46

A neutral government is bound to use the means at its disposal:

(1) To prevent the departure from its jurisdiction of an aircraft in condition to make a hostile attack against a belligerent Power, or carrying or accompanied by appliances or materials the mounting or utilization of which would enable it to make a hostile attack, if there is reason to believe that such aircraft is destined for use against a belligerent Power;

(2) To prevent the departure of an aircraft the crew of which includes any member of the combatant forces of a belligerent Power;

(3) To prevent work upon an aircraft designed to prepare it to depart in contravention of the purposes of this article.

On the departure by air of any aircraft despatched by persons or companies in neutral jurisdiction to the order of a belligerent Power, the neutral government must prescribe for such aircraft a route avoiding the neighborhood of the military operations of the opposing belligerent, and must exact whatever guarantees may be required to ensure that the aircraft follows the route prescribed.

ARTICLE 47

A neutral state is bound to take such steps as the means at its disposal permit to prevent within its jurisdiction aerial observation of the movements, operations or defenses of one belligerent, with the intention of informing the other belligerent.

This provision applies equally to a belligerent military aircraft on board a vessel of war.

ARTICLE 48

The action of a neutral Power in using force or other means at its disposal in the exercise of its rights or duties under these rules cannot be regarded as a hostile act.

CHAPTER VII

Visit and Search, Capture and Condemnation

* * * * * * *

ARTICLE 49

Private aircraft are liable to visit and search and to capture by belligerent military aircraft.

ARTICLE 50

Belligerent military aircraft have the right to order public non-military and private aircraft to alight in or proceed for visit and search to a suitable locality reasonably accessible.

Refusal, after warning, to obey such orders to alight or to proceed to such a locality for examination exposes an aircraft to the risk of being fired upon.

ARTICLE 51

Neutral public non-military aircraft, other than those which are to be treated as private aircraft, are subject only to visit for the purpose of the verification of their papers.

ARTICLE 52

Enemy private aircraft are liable to capture in all circumstances.

ARTICLE 53

A neutral private aircraft is liable to capture if it:

(a) Resists the legitimate exercise of belligerent rights;

(b) Violates a prohibition of which it has had notice issued by a belligerent commanding officer under Article 30;

(c) Is engaged in unneutral service;

(d) Is armed in time of war when outside the jurisdiction of its own country;

(e) Has no external marks or uses false marks;

(f) Has no papers or insufficient or irregular papers;

(g) Is manifestly out of the line between the point of departure and the point of destination indicated in its papers and after such enquiries as the belligerent may deem necessary, no good cause is shown for the deviation. The aircraft, together with its crew and passengers, if any, may be detained by the belligerent, pending such enquiries;

(h) Carries, or itself constitutes, contraband of war;

(i) Is engaged in breach of a blockade duly established and effectively maintained;

(k) Has been transferred from belligerent to neutral nationality at a date and in circumstances indicating an intention of evading the consequences to which an enemy aircraft, as such, is exposed.

Provided that in each case (except k), the ground for capture shall be an act carried out in the flight in which the neutral aircraft came into belligerent hands, *i.e.*, since it left its point of departure and before it reached its point of destination.

ARTICLE 54

The papers of a private aircraft will be regarded as insufficient or irregular if they do not establish the nationality of the aircraft and indicate the names and nationalities of the crew and passengers, the points of departure and destination of the flight, together with particulars of the cargo and the conditions under which it is transported. The logs must also be included.

ARTICLE 55

Capture of an aircraft or of goods on board an aircraft shall be made the subject of prize proceedings, in order that any neutral claim may be duly heard and determined.

ARTICLE 56

A private aircraft captured upon the ground that it has no external marks or is using false marks, or that it is armed in time of war outside the jurisdiction of its own country, is liable to condemnation.

A neutral private aircraft captured upon the ground that it has disregarded the direction of a belligerent commanding officer under Article 30 is liable to condemnation, unless it can justify its presence within the prohibited zone.

In all other cases, the prize court in adjudicating upon any case of capture of an aircraft or its cargo, or of postal correspondence on board an aircraft, shall apply the same rules as would be applied to a merchant vessel or its cargo or to postal correspondence on board a merchant vessel.

ARTICLE 57

Private aircraft which are found upon visit and search to be enemy aircraft may be destroyed if the belligerent commanding officer finds it

necessary to do so, provided that all persons on board have first been placed in safety and all the papers of the aircraft have been preserved.

ARTICLE 58

Private aircraft which are found upon visit and search to be neutral aircraft liable to condemnation upon the ground of unneutral service, or upon the ground that they have no external marks or are bearing false marks, may be destroyed, if sending them in for adjudication would be impossible or would imperil the safety of the belligerent aircraft or the success of the operations in which it is engaged. Apart from the cases mentioned above, a neutral private aircraft must not be destroyed except in the gravest military emergency, which would not justify the officer in command in releasing it or sending it in for adjudication.

ARTICLE 59

Before a neutral private aircraft is destroyed, all persons on board must be placed in safety, and all the papers of the aircraft must be preserved.

A captor who has destroyed a neutral private aircraft must bring the capture before the prize court, and must first establish that he was justified in destroying it under Article 58. If he fails to do this, parties interested in the aircraft or its cargo are entitled to compensation. If the capture is held to be invalid, though the act of destruction is held to have been justifiable, compensation must be paid to the parties interested in place of the restitution to which they would have been entitled.

ARTICLE 60

Where a neutral private aircraft is captured on the ground that it is carrying contraband, the captor may demand the surrender of any absolute contraband on board, or may proceed to the destruction of such absolute contraband, if sending in the aircraft for adjudication is impossible or would imperil the safety of the belligerent aircraft or the success of the operations in which it is engaged. After entering in the log book of the aircraft the delivery or destruction of the goods, and securing, in original or copy, the relevant papers of the aircraft, the captor must allow the neutral aircraft to continue its flight.

The provisions of the second paragraph of Article 59 will apply where absolute contraband on board a neutral private aircraft is handed over or destroyed.

CHAPTER VIII

Definitions

* * * * * * *

ARTICLE 61

The term "military" throughout these rules is to be read as referring to all branches of the forces, *i.e.*, the land forces, the naval forces and the air forces.

ARTICLE 62

Except so far as special rules are here laid down and except also so far as the provisions of Chapter VII of these rules or international conventions indicate that maritime law and procedure are applicable, aircraft personnel engaged in hostilities come under the laws of war and neutrality applicable to land troops in virtue of the custom and practice of international law and of the various declarations and conventions to which the states concerned are parties.

APPENDIX B

Forms, Etc., Relating to Military Government

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No. 35

LETTER OF INSTRUCTIONS FROM PRESIDENT RESPECTING EXERCISE OF MILITARY GOVERNMENT

(See Chapter III, Section VIII, paragraph 32.)

No. 36

G-2 DIGEST OF INFORMATION RESPECTING ENEMY TERRITORY TO BE OCCUPIED

(See Chapter III, Section VIII, paragraph 108.)

No. 37

PROCLAMATION ANNOUNCING ESTABLISHMENT OF MILITARY GOVERNMENT

(See Chapter III, Section VIII, paragraph 110 *d*; Section IV, paragraphs 59 and 65, and Section III, paragraph 34.)

No. 38

PROPOSED DRAFT OF MILITARY ORDER PUBLISHING SUPPLEMENTAL REGULATIONS FOR OCCUPIED ENEMY TERRITORY*

The following provisions, rules, and regulations are published for the guidance of the inhabitants of the territory occupied by the United States Forces, and of all persons temporarily within the said territory not belonging to or connected with the said forces, and will be strictly observed.

Except as to persons belonging to, or connected with, the occupying forces, existing laws of the country not of a political nature or character will continue in full force and effect and will be administered by local officials.

In addition thereto, the following provisions, rules, and regulations will be administered by the military tribunals of the occupying forces, and persons guilty of their violation will be punished as such tribunals may direct.

It is unlawful and will subject one to punishment:

1. To act as a spy or to supply information to the enemy.
2. To do, or procure the doing of, damage to any bridge or railway or property used in the operation of any railway; to any war material; to any telegraph or other means of communication; or to any water, light, or power plant, or system or any part thereof.
3. To foul or pollute any source of water supply.
4. To destroy, damage, or secrete any animals, vehicles, supplies, food, fodder, food products, or material useful to the occupying forces.
5. To aid prisoners of war to escape, or to give assistance to the enemy voluntarily.
6. To harm or injure, or to conspire to harm or injure, troops of the occupying forces or of individual members thereof.
7. To induce, or attempt to induce, soldiers of the occupying forces to serve as spies, to desert, to surrender, to mutiny, to disobey orders, or to desist from the performance of duties enjoined upon them.
8. To damage or alter military notices or sign posts.
9. To circulate proclamations or propaganda, or spread the contents thereof in the interest of the enemy.
10. To recruit troops for the army of the enemy or to induce, or attempt to induce, persons to leave the occupying forces for the purpose of joining the army of the enemy.
11. To commit any other act of war treason or any other violation of the laws of war.
12. To utter seditious language.
13. To spread alarmist reports.
14. To overcharge members of the occupying forces for goods, wares, or merchandise.
15. To interfere with troops in formation.
16. To commit arson or to convert goods or property to the injury of any person or persons belonging to or connected with the occupying forces.
17. To circulate newspapers, pamphlets, or other printed matter likely to promote sedition, dissatisfaction, or bad feeling in or toward the occupying forces, or intended to do so.
18. To signal by lights or any other means.
19. To sketch or photograph any places or any material used by the occupying forces.

*For suggestions as to additional items that should be given consideration with a view to their inclusion in this order, if appropriate, see Chapter III, Section VIII, paragraphs 109 *e* and 110 *e*.

20. To escape, or attempt to escape, from custody or imprisonment.
21. To forge, alter, or tamper with passes, permits, or other documents of any kind issued by, or pursuant to the directions of, the occupying forces.
22. To swear falsely.
23. To refuse to comply with a requisition or to interfere with another's compliance therewith.
24. To perform or commit any act in substantial obstruction of the military government.
25. To show disrepect for the flag or colors of the United States.
26. To print, post, distribute, or by any means publish or circulate, within the occupied area, notices, hand-bills, or other documents discussing or dealing in any way with political situations, local, provincial, or national.
27. To attempt to do any of the things above enumerated, or to advise or assist anyone else to do, or attempt to do, any of them.
28. To violate any proclamation, regulation, or order issued by the occupying forces.

No. 39

PROPOSED DRAFT OF ORDER ESTABLISHING MILITARY TRIBUNALS AND DEFINING THEIR PROCEDURE

1. Military Commissions for the trial of inhabitants offending against the laws of war or the military administration will be appointed only by the Military Governor.
2. One or more Superior Provost Courts, to consist of one officer each, who, if the military situation permits, will be a field officer, will be appointed by the Military Governor for the district occupied by the Army Troops, and also for each district occupied by a Division or by Corps Troops. Officers so appointed will be detached from tactical organizations. The detail to such duty will be as nearly permanent as the military situation will permit.
3. The Commanding Officer of each city, town, village, or other municipal unit will appoint an Inferior Provost Court. In case there should be only one commissioned officer on duty in any such place, such officer will designate himself as Inferior Provost Court.
4. The Commanding Officer of a Division or of a Corps shall have the power to approve or disapprove or mitigate the sentences of Inferior and Superior Provost Courts exercising jurisdiction within the territorial limits of the Division or of the Corps Troops, respectively, and officers appointing Inferior Provost Courts shall have the power to approve or disapprove or mitigate sentences of such courts. The Military Governor shall exercise the authority to revoke, mitigate, or commute any sentence adjudged by any provost court or to set aside a judgment of conviction and return the case for a new trial.
5. Military commissions in accordance with the laws of war shall have jurisdiction to try any and all cases referred to them which involve violations of the laws of war or of orders promulgated by the occupying forces.
6. A Superior Provost Court shall have jurisdiction:
a. To try all cases wherein an administrative officer of the local government is the accused and all other cases which are regarded as involving derelictions of a nature too serious to be referred to the inferior courts.
b. To exercise general advisory supervision over Inferior Provost Courts. This supervision, however, will not extend to control, or effort at control, over the individual right and duty of such court to exercise an untrammeled judgment in all matters affecting its proceedings and final judgments.

c. To visé the records of Inferior Provost Courts and return them for correction of any apparent irregularity, and to advise the Commanding General within their territorial jurisdiction to set aside judgments of convictions by Inferior Provost Courts and return cases for new trial or for the discharge of the accused, or to mitigate sentences imposed by Inferior Provost Courts.

d. The maximum sentence which a Superior Provost Court may impose is imprisonment for six (6) months or a fine of $1000.00, or both such fine and imprisonment.

e. Only one Superior Provost Court in any district shall exercise the powers set out in *b* and *c*. In all districts where there shall be more than one Superior Provost Court, the Military Governor will designate which of these courts shall exercise these extra powers.

7. An Inferior Provost Court shall have jurisdiction for the trial of minor offenses against the laws of war or orders issued by the military authorities. The maximum punishment which such court may impose is imprisonment for one (1) month or a fine of $100.00, or both such fine and imprisonment.

8. All military tribunals shall possess a common jurisdiction as follows:

a. In all cases where a civil person has possession or control of, or power of disposition over, property which, either directly or by his procurement, is being used, possessed, or transported in a manner illegal or contrary to orders or proclamations of the occupying forces, and such person shall be convicted by a military tribunal by reason of acts committed or things done in connection therewith, the military tribunal convicting such person will, as a part of its judgment, make adjudication as to the disposition to be made of such property, and will order either that such property be returned to the owner or that it be forfeited to the army by reason of the use made thereof; and in case it be adjudged forfeited, it shall be turned over to the Officer in Charge of Civil Affairs for the district in which such court is held, to be disposed of by him as orders may require.

b. In all cases of conviction for the illegal sale or gift of intoxicating liquors or habit forming drugs by a person engaged in the sale thereof at a fixed place, the court may, as a part of its judgment, order the closing, either temporarily or permanently, of such place of business.

9. The procedure in trials before Military Commissions shall be that followed in trials before general courts-martial, insofar as such procedure is applicable to trials before military commissions. No death sentence will be carried into execution until approved by the Military Governor.

10. Proceedings before Provost Courts will be as follows:

a. A written document setting forth the name of the accused, the place where and time when the offense is alleged to have occurred, and the substance of the offense charged, stated in plain and concise language, shall be filed with the court, and the accused or his counsel shall have a right to inspect the same and shall have a copy thereof upon demand.

b. No person charged with the commission of an offense shall be tried before a Provost Court unless he be present in person at the trial and be confronted with the witnesses against him. He shall have the right to be heard in person or by counsel of his own selection, but such counsel will not be provided at the expense of the occupying forces. No such person will be admitted to bail pending trial.

c. All evidence before the Provost Court will be under oath administered by the judge of such court, and in general will be taken under the rules of the common law. Evidence will not be reported or reduced to writing. Unless the court fluently speaks and fully understands the language spoken by the accused, a competent interpreter will be used in order that both the accused and the court may be fully informed as to the entire proceedings.

d. All hearings before Provost Courts will be conducted summarily. Trials will be had and judgments entered with the utmost dispatch consistent

with the administration of justice. It is not essential that the prosecution be specially represented by an officer corresponding to a trial judge advocate.

e. The sentence of a Provost Court shall be put into execution forthwith upon the entry of judgment and without awaiting the final action of the reviewing authority; but in all cases the action of the reviewing authority will be obtained as expeditiously as possible.

f. In case of refusal or inability to pay a fine imposed, the person convicted shall stand imprisoned until such fine be paid, or until such fine be liquidated through imprisonment on the basis of one day's imprisonment being the equivalent of $..... fine, or until such person be released by order of competent authority. In all cases where a fine is imposed, it will be stated upon the record of the proceedings, and also upon the weekly report of the court, whether or not the fine has been paid. In all cases where sentence of imprisonment is imposed, the place of confinement will be designated by the officer authorized to approve or disapprove the sentence.

g. Provost Courts are authorized to compel attendance of civilian witnesses and for such attendance such witnesses shall be entitled to receive the compensation allowed by the law of their country for attendance before local police courts. In cases where it may be necessary to compel the attendance of civilian witnesses, the Provost Courts will take necessary action through the proper local executive officers, and where such action is not effective, it will have at its disposal the services of the nearest Military Police unit or detachment for the purpose of enforcing such attendance.

11. Each Provost Court will keep a simple record showing the name of the offender, the offense, the plea, the fine, the judgment and the action of the convening authority in each case.

12. On Saturday of each week, Provost Courts will forward through channels to the office of the Officer in Charge of Civil Affairs in occupied territory, a copy of the record made in each case, as provided by the preceding paragraph, or, in case no trials have been had, a statement to that effect. Records of Inferior Provost Courts will be forwarded through the Superior Provost Court exercising the jurisdiction set forth under subparagraphs *b* and *c* of paragraph 6. The reports will be made upon the appended form.

13. All money collected as fines by Provost Courts will be turned in weekly to.....

No. 40

PROPOSED FORM FOR SUMMONS TO APPEAR BEFORE PROVOST COURT

ARMY OF THE UNITED STATES

.....PROVOST COURT
(*Superior or Inferior*)

....., ...
(*Place*) (*Date*)

SUMMONS

Mr. (Mrs. Miss.)..... is hereby summoned to appear at..... for trial under the following charges:

CHARGE I:.....

Specification 1:.....

.....

Specification 2:.....

.....

CHARGE II:.....

Specification:.....

You may have a lawyer and may bring such witnesses as you consider necessary.

.....
(*Signature of Provost Court*)

.....
(*Rank*)

No. 41

PROPOSED FORM FOR RECORD OF TRIAL BY PROVOST COURT

ARMY OF THE UNITED STATES

No. of case.....

.....PROVOST COURT
(*Superior or Inferior*)

....., ...
(*Place*) (*Date*)

CHARGE SHEET

....
(Surname) (Christian name) (Address)

....
(Married or single) (Age) (Occupation)

....
(Date of arrest) (Date of confinement) (Place of confinement)

Witnesses.....
(Name) (Address)

.....

.....

Offense:.....

Specification:.....

.....

.....

Pleas:.....

.....

Findings:.....

.....

Sentence:.....

.....

Date tried:..... Fine paid:.....
(Yes or No)

Remarks:.....

.....
(*Signature of Provost Court*)

.....
(*Rank*)

Action of Reviewing Authority:.....

.....

.....

(Signature of Reviewing Authority)

.....

(Rank)

(NOTE:—The back of this form should bear the following form to be filled out by the court.)

I hereby certify that the accused person named on the face of this document was present in person at his trial and was confronted with the witnesses against him; that he was advised of his right to be heard in person or by counsel of his own selection and was given the opportunity to be so heard; that all evidence considered was given under oath administered by me; and that all proceedings which were not had in the language spoken by the accused were fully and accurately translated to him (by me) (by a competent interpreter).

.....

(Signature of Provost Court)

.....

(Rank)

No. 42

PROPOSED FORM FOR RECEIPT FOR SUPPLIES

(To be issued in triplicating books so arranged that one copy can be sent to proper headquarters, one copy given to the party from whom the articles are requisitioned, and one copy retained.)

(Field Form No.....)

(Not negotiable)

RECEIPT FOR SUPPLIES IN ENEMY'S COUNTRY

Received from.....

.....

P. O. Address.....

Date....., 19.....

Quantity	*Unit*	*Article*	*Condition*

I certify that I have received the above stores, that I have (have not) paid for same and that they will be taken up and accounted for on my ..... for .....

....., 19.....

.....

(*Signature of officer*)

.....

(*Rank, etc.*)

Station:.....

.....

(Signature of person furnishing supplies)

Authority:.....

Under Art. 52, Hague Convention, October 18, 1907, respecting laws and customs of war on land, 32 Stats., Part 2, page 1823.

Instructions to holder

THIS RECEIPT SHOULD BE DELIVERED TO

.....

(Name of disbursing officer)

at.....

(Address of disbursing officer)

.....

within 30 days of its date.

The holder will request a certificate of acknowledgement at the time of turning in this receipt, which is intended to safeguard his interests in case of loss of this receipt while in transit or during adjustment.

The holder is informed that this receipt will be examined and inquired into and that he may be required to present satisfactory evidence as to his title, etc., to the property taken before payment is made.

No payment can be made under any circumstances whatever until this receipt or a proper certificate of acknowledgement in lieu thereof, has been turned in.

No. 43

CLASSIFICATION OF PROPERTY IN OCCUPIED TERRITORY

(Adapted from Spaight, *War Rights on Land*, p. 418.)

Property may be either:

I. Confiscable, when it becomes the property of the occupant outright, no idemnity or compensation being due (C).

II. Not confiscable, but subject to sequestration by the occupant, who must, however, return the property at the peace or pay compensation (S).

III. Neither confiscable nor sequestrable, but subject to be requisitioned (for barracks or billets, *e.g.*, services or supplies) (R).

IV. Subject to usufruct, *i.e.*, it may be exploited by the occupant, who must not, however, alienate, damage, or destroy the substance (U).

CLASSIFICATION OF PROPERTY UNDER THE ABOVE HEADINGS

*Nature of the property**	*Public property*	*Private property*
Movables:		
(1) Money, notes, realizable securities	C	R
(2) War material such as depots of arms, uniforms, army stores, and, generally speaking, any other property directly adaptable to war	C	S
(3) Railway material, telegraphs, shore ends of cable (except as stated below), wagons, horses, motor cars, airships, boats, and other means of transit and communication	C[1]	S
(4) Shore ends of submarine cables connected with a neutral country	S	S
(5) Movable property not directly adaptable to warlike purposes	R	R
Immovables:		
(1) Institutions devoted to religion[2], charity, education, arts, and sciences	R	R
(2) Other buildings, lands, forests, and agricultural undertakings	U	R
(3) The property of communes, *e.g.*, "town halls, waterworks, gas works, police stations" (Holland, *Laws and Customs of War*, p. 40)	R	R

[1] Whether State-owned railway rolling stock is to be retained by captor or restored should be specially settled in the treaty of peace.

[2] Includes churches, temples, mosques, synagogues, etc., without any distinction as to the nature of the religious cult (Hague I.B.B., p. 152).

As to neutral property in an occupied country, see Chapter XV, Spaight.

*Imperative military necessity may justify the destruction of any of the above kinds of property.

No. 44

ORDER AGAINST FRATERNIZATION, PILLAGING ETC., IN GERMANY

(G. O. No. 218 issued from General Headquarters, A.E.F., 28 November, 1918.)

In view of the extraordinary conditions under which that part of the American Expeditionary Forces which constitutes the army of occupation of German territory is serving, the commander-in-chief desires to acquaint the officers and men composing it with the expectations which he entertains as to their conduct. You have come not as despoilers or oppressors, but simply as the instruments of a strong, free government whose purposes towards the people of Germany are beneficent. During our occupation the civil population is under the special safeguard of the faith and honor of the American Army.

It is, therefore, the intention of this order to appeal directly to your pride in your position as representatives of a powerful but righteous nation, with the firm conviction that you will so conduct yourself in your relations with the inhabitants of Germany as will cause them to respect you and the country you have the honor to represent. While you appear among them as a conquering army, you will exhibit no ill will towards the inhabitants.

On the other hand you are warned against conduct unbecoming your position as instruments of military rule. So long as a state of war continues, Germany remains enemy territory, and there must be no intimate personal association with its inhabitants. A dignified and reserved attitude will be maintained on your part at all times.

It is not believed that any acts of pillage or violence will be committed by members of the American forces, but, should any persons prove themselves unworthy of this confidence, their acts will be considered not only as crimes against the sufferers, but as dishonoring the American Army and as a direct insult to the flag of the United States. Such transgressions, should they occur, will be punished with the severest penalties known to our military law.

No. 45

ANORDNUNGEN

(Rules and regulations issued from General Headqu arters, A.E.F., 9 December, 1918.)

The following Rules and Regulations are published for the guidance of the inhabitants of the District of Germany occupied by the American Forces and will be strictly observed.

IDENTIFICATION. Every person above the age of twelve must carry at all times an Identity Card bearing his signature and address. Such card will be issued and stamped by the appropriate civil official.

A change of address must be immediately notified to the appropriate civil official and indorsed by him on the Identity Card.

The head of each household must keep posted on the inside of the outer door of the building a list showing the name, nationality, sex, age and occupation of every person of his household residing in the building.

CIRCULATION. Circulation will be controlled by the American authorities. Burgomasters, under the direction of the American authorities, will regulate travel within the American Zone and will be held responsible for a strict compliance with all regulations. Authority to leave the American Zone will be granted only by a Division or higher Commander.

ARMS AND AMMUNITION. The carrying of arms or deadly weapons is forbidden except by the local police.

Every person in possession of arms and ammunition of any kind must deliver them to the American authorities at such time and place as may be appointed. A receipt for each weapon will be given at the time of delivery and the weapon tagged with the name of the owner.

ALCOHOLIC DRINK. The sale or gift of all alcoholic drink, except light wine and beer, is forbidden. Alcohol for medicinal or industrial purposes is not within this prohibition. The sale or gift of light wine or beer is prohibited except from 11:00 AM to 2:00 PM and 5:00 PM to 7:00 PM. A violation of these orders respecting drink will render the offender liable, in addition to other punishment, to confiscation of his stock and the closing of his business.

ASSEMBLIES AND MEETINGS. All gathering of crowds is forbidden. No meeting or assembly of persons shall take place without authority of the local military commander. Sessions of courts and councils, schools and religious services may be held as usual.

PUBLICATIONS. A copy of each newspaper or other periodical publication will be delivered to the local military commander immediately on issue. The appearance of any matter reflecting on or injurious to the American military government will render the publication liable to suspension or suppression. Excepting the periodical press, no printed matter will be published without permission from the local American military authority.

POST, TELEGRAPH AND TELEPHONE. The mail is subject to the censorship of the American military authorities.

The use of the telegraph or long distance telephone is forbidden except by permission of the local military commander.

The use of aerial wireless apparatus is forbidden.

All private telephone or telegraph apparatus, ground or aerial wireless apparatus, must be reported to the military commander at once.

No person may, without authority of the local military commander, transmit any message or communication to any person outside the territory occupied by American troops except through the post office.

PIGEONS. The use of carrier pigeons is forbidden. Owners of carrier pigeons will make an immediate report of their pigeon cotes to the military commander with a list of the marks of their pigeons. Pigeon houses must be kept open day and night.

PHOTOGRAPHS. The taking of photographs out of doors, except by permission of the local military authority, is forbidden.

SPECIAL RULES.

Whosoever:

(a) Attacks, disturbs, or impedes any American troops or officer or soldier thereof, or

(b) Destroys, damages, or disturbs any railway, telegraph or telephone installation, lighting, water or power system or any part thereof, or

(c) Destroys, damages, steals or secretes any property of or in possession of the American Army, or

(d) Purchases, receives in pawn or has in his possession articles of clothing, equipment or rations furnished to American soldiers or belonging to the American Armies, or

(e) Destroys, damages, pollutes, or secretes any fodder, water or other thing useful to the American Army, or

(f) Acts as a spy or commits war treason against the American Army, or

(g) Commits any act whatever injurious to the American Army or in obstruction of the Military Government, or in violation of these regulations or any regulations or orders hereafter made by the American military authorities, or refuses to comply with a requisition, or

(h) Attempts to do any of the above things; or advises or assists any one else to do or attempt to do any of them;

will be punished as a military court may direct.

MISCELLANEOUS. The term civil authority, as used in these regulations, means the *Burgomeister* or *Gemeindevorsteher* or the head of the local community.

Every person must familiarize himself with these regulations and all others hereafter made by the American military authorities. Ignorance of the regulations will not be accepted as an excuse for their violation. In case of doubt as to the requirements of the regulations, inquiry should be made at the Rathaus.

No. 46

ORDERS NO. 1

(Issued from Advance General Headquarters, Treves, Germany, 13 December, 1918.)

1. Army, corps and division commanders will detail, from their commands, suitable officers to be designated as in charge of the Civil Affairs on their respective staffs.

2. The division commander will be responsible for the administration of civil affairs in his district. He will detail a suitable officer, preferably the commanding officer, to be in charge of each town or canton occupied. Army and corps commanders will take similar action in the case of territory occupied by the army and corps troops.

3. Cantons not garrisoned will be inspected and regulated by officers detailed by the commanding general of the division controlling the area in which the cantons are located, or in the case of army or corps troops by the army or corps commander.

4. The office of the Officer in Charge of Civil Affairs will be the only office of record in civil affairs administration. All reports, documents and papers of any kind relating to civil affairs in the occupied territory will be forwarded to this office for action or file.

ORGANIZATION

5. The office of the Officer in Charge of Civil Affairs will be organized with the following departments:

(a) *Public Works and Utilities.*—This department will include supervision of railroads, street railways, telephones, electric lighting plants, etc. The officer in charge will consult and cooperate with the Inter-Allied Commission on Railroads.

(b) *Fiscal Affairs.*—This department will be charged with the supervision of all treasuries, banks, financial institutions and all matters of taxation.

(c) *Sanitation and Public Health.*—This department will have charge of the sanitation and health in the districts, so far as the inhabitants are concerned.

(d) *Schools and Charitable Institutions.*—This department will exercise a general supervision over all schools and charitable institutions in the occupied districts.

(e) *Legal Department.*—This department will exercise general supervision over all military commissions and provost courts and will be charged with the custody of all court records. It will exercise general supervision over all local courts in the territory occupied.

(f) Other departments will be added when the necessity arises.

6. Officers in charge of the above departments are advisory to the Officer in Charge of Civil Affairs. In giving instructions to officers, they will be careful that they are given through the proper channels.

Courts

7. Army, corps and division commanders are authorized to convene military commissions for the trial of inhabitants offending against the laws of war or the military government.

8. No death sentence will be carried into execution unless approved by the commander-in-chief.

9. Division commanders will appoint, for the districts occupied by their divisions, a superior provost court to consist of one officer, preferably a field officer. Army and corps commanders will appoint a superior provost court for the districts occupied by the army and corps troops. The maximum punishment which this court may impose is imprisonment for six months and a fine of five thousand marks, or both.

10. Commanding officers of each city, town or canton will appoint an inferior provost court for the trial of minor offenses against laws of war or military government by inhabitants. The maximum punishment which this court may impose is imprisonment for three months and a fine of one thousand marks, or both.

11. Officers appointing provost courts shall have power to approve, disapprove or mitigate the sentences of such courts.

12. Each provost court will keep a simple record showing the name of the offender, the offense, the plea, the finding, the sentence and the action of the convening authority in each case.

13. Weekly reports, to be made each Saturday, will be forwarded, through channels, to the office of the Officer in Charge of Civil Affairs, showing all cases tried and the information given in Par. 12.

14. A form for these reports is attached hereto.

15. No member of the American or Allied forces will be tried by any military commission or provost court.

16. All money collected as fines by provost courts will be turned in weekly to the Department of Fiscal Affairs.

Requisitions

17. Billets for officers and men, fuel, forage and straw will be requisitioned.

18. Food will not be requisitioned except in case of an immediate emergency. All such cases to be reported at once to the division, corps or army commander.

19. Requisitions will only be demanded on authority of the commanding officer in the locality occupied.

20. Requisitions will not be paid in cash, but a receipt will be given for all supplies and billets furnished. This receipt will be signed by a supply officer and approved by the commanding officer. It will show clearly the number of billets occupied, and the length of time and the quantity and condition of all supplies furnished.

21. Requisitions should generally be made upon municipalities, but may be made upon individuals when necessary.

22. All inhabitants should file receipts with their *burgomeister*.

23. Supply officers will forward through channels to the Office of the Officer in Charge of Civil Affairs one copy of all receipts given.

24. Time will be changed from German to International time at midnight, December 14-15. At that time all clocks will be set back one hour. Military authorities will see that the local German authorities in all occupied cities, towns or cantons are notified.

25. The official rate of exchange is one hundred (100) francs equal one hundred and forty-two marks and eighty-five pfennigs (142.85) or one mark equal seventy (70) centimes. Officers and men should change their francs at banks, as short changing will be eliminated, the banks stand the loss if any, and general prices will not be raised.

No. 47

REVISION OF MILITARY ORDERS

(Civil Affairs Bulletin No. 58, issued in Germany, 31 January, 1920.)

In order to bring the orders of the military government as far as practicable into harmony with the ordinances of the Inter-Allied Rhineland High Commission, which were published in General Orders No. 2. these Headquarters, January 10, 1920, orders heretofore issued on the following subjects are revised or revoked as indicated. Where *ordinances* are referred to, those of the High Commission will be understood. It is the purpose of this order, taken in connection with General Orders No. 2, promulgating the ordinances of the High Commission, to bring to the attention of German citizens all existing orders of prime importance now in effect in the American zone of occupation.

1. ALCOHOL—DRUGS.—(a) Existing orders regarding the sale of alcohol or drugs to members of the American or Allied troops of occupation, being in conformity with the ordinances, will remain in effect.

(b) Only beer and light wines may be sold to persons in the military service (American or Allied) and to these only between the hours of 12:00 noon and 1:00 PM, and between 5:00 PM and 9:30 PM.

(c) All orders heretofore issued imposing restrictions upon the sale of alcohol either at wholesale or retail to persons other than members of the troops of occupation are revoked.

2. ARMS AND AMMUNITION.—(a) Orders heretofore issued requiring reports of sales of fire arms and ammunition are revoked, and the records and reports required therein will be made as provided in Ordinance No. 3, Part V.

(b) All arms heretofore turned in pursuant to orders of the military government may be returned to their owners upon complying with the ordinances.

(c) Permits to carry fire arms will hereafter be issued in accordance with the ordinances.

3. ASSEMBLIES AND MEETINGS. The rules laid down in the ordinances will be carried out except that notice of *industrial* meetings will also be given the same as required by the ordinances in the case of *political* meetings.

4. BILLETS. Pursuant to Article 8 of the Rhineland Agreement, billeting will continue to be done in accordance with regulations issued from time to time by these headquarters. Orders heretofore issued requiring that no German nationals may reside in the city of Coblence for more than twenty days without first applying to the *Stadtische Wohnungsamt, Rathaus*, are continued in effect.

5. BLOCKADE—IMPORTS AND EXPORTS. All restrictions heretofore issued from these headquarters regarding the export or import of goods, except arms, munitions and any other material prepared especially for war, are removed.

6. CINEMATOGRAPHS—OBSCENE PICTURES, ETC. The display of any obscene moving or still pictures in any cinematograph or other public place of amusement is forbidden. The sale or gift or any attempt to sell or give away to members of the American or Allied Armies any indecent or obscene

pictures, post cards, or literature of any kind is strictly forbidden. This order is supplementary to Ordinance No. 3, Article 13.

7. CIRCULATION. Civilian circulation will be governed by the ordinances.

8. CLAIMS. The settlement of claims for damages to *property* caused by American troops or military operations will be governed by rules issued from time to time by these headquarters. All civil officials are warned that it is the policy of the American Government not to permit the payment of any claims for damages alleged to have been committed by American troops until the same shall have been presented to and passed upon by the proper claims department of the Army.

9. CLEMENCY. All appeals for clemency on the part of civilian prisoners sentenced by military courts will be presented to the Officer in Charge of Civil Affairs of the *Kreis*, who will investigate the same, indorse thereon his recommendations, and forward same to the Officer in Charge of Civil Affairs, American Forces in Germany, for the action of the Commanding General. If such an appeal for clemency is based upon physical disabilities it will be investigated by the nearest medical officer of the Army and the report of his examination will be forwarded with the appeal. Except under very unusual circumstances an appeal for clemency in the case of a civilian prisoner sentenced by a military court will not be considered in any single case more frequently than once a month.

10. COMPLAINTS AGAINST MILITARY PERSONS. All complaints against members of the American Army must be reduced to writing and submitted to the Officer in Charge of Civil Affairs in the *Kreis*, who will make a thorough investigation of the facts and foward the same with his recommendations to the Officer in Charge of Civil Affairs, American Forces in Germany, for the information of the Commanding General.

11. COURTS—GERMAN. (a) German *civil* courts will hereafter be permitted to exercise complete jurisdiction vested in them by German law or regulations without any supervision from the military authorities, subject only to such regulation as is provided for in the ordinances; provided, that until such time as the United States shall be at peace with Germany, no member of the American Army, nor any person attached to or serving with the same, shall be subject to the jurisdiction of any German court for any cause whatsoever.

(b) German *criminal* courts shall likewise be permitted to exercise their jurisdiction without military supervision, subject only to the provisions of the ordinances.

12. COURTS—MILITARY.—(a) The jurisdiction of Provost Courts shall remain unchanged.

(b) Vagrancy and Juvenile Courts: Jurisdiction at present exercised by these courts will hereafter be limited to the trial of vagrant women as they are defined in orders heretofore issued from these headquarters; vagrant men shall be reported to the High Commission for deportation; juveniles shall be turned over to the German courts for trial.

13. ELECTIONS. Any restrictions on elections heretofore imposed by orders issued from these headquarters are revoked.

14. FOOD LAWS. All orders heretofore issued designed to assist in the enforcement of the German food laws are revoked, except that for the present, the military authorities will continue to punish as an offense against the military government any person who assaults or physically resists any official connected with the administration of the German food laws while the latter is acting in the performance of his official duty.

15. HUNTING. All restrictions imposed by military orders upon Germans in the matter of hunting are revoked and this sport will be regulated hereafter according to the ordinances.

16. IDENTIFICATION.—(a) Identity cards (*Ausweise*) will be provided and carried, according to the ordinances. The attention of all German

citizens is invited to the fact that the first edition of the ordinances through typographical error in the German text, it was not required that the *Ausweise* have a photograph attached. This requirement must be observed.

(b) Orders heretofore issued requiring the heads of households to keep a list posted on the inside of the outer door of persons belonging to his household and residing in the building, are revoked.

17. MARRIAGE. No person in the American military service is permitted to marry without the authority of the Commanding General, American Forces in Germany. Orders heretofore issued prohibiting German civil officials from performing marriages between members of the American Army and nationals of *any* country are continued in force.

18. MEDICAL TREATMENT. Orders heretofore issued prohibiting German physicians, surgeons, apothecaries or any other persons not belonging to the Medical Department of the American Army from treating or giving medical advice in the case of venereal disease to any member of the American Army, or to supply them, directly or indirectly, drugs, medicines or medical or surgical apparatus for the treatment of such disease, are continued in effect.

19. MILITARY DRILLS. Military drills in public schools in occupied territory have heretofore been prohibited. Such prohibition will remain in effect until duly modified.

20. PHOTOGRAPHS. Orders heretofore issued prohibiting the taking of photographs out of doors except by permission of the military authorities are revoked.

21. PIGEONS. All orders regarding the owning, maintenance, or use of carrier pigeons are revoked.

22. POLICE—GERMAN. The organization of local police reserves heretofore authorized by these headquarters may continue until completed, if so directed by the German authorities, or until replaced by any other system authorized by the High Commission. The creation of any other police reserves in the American zone under whatever name, without previous authorization of the High Commission, is strictly prohibited.

23. PRICES—DISCRIMINATION. The attention of all merchants and shopkeepers of every sort and description is invited to the ordinance prohibiting discrimination in prices as against members of the Allied forces or officials. Orders heretofore issued requiring the posting of price lists in restaurants under the seal of the German police and marking of articles for sale in shops are continued in effect. Nothing herein shall be construed as authorizing the levying of luxury, wine or other direct taxes on any member of the Allied Forces or of the High Commission.

24. PRISONERS OF WAR—DEMONSTRATIONS. Orders heretofore issued prohibiting official or public reception of German prisoners of war will remain in effect. The return of such prisoners must not be made the occasion of official reception or any public assembly.

25. PROPERTY—UNLAWFUL POSSESSION OF. Offenses against the property of the United States or of any of the Allied governments will be prosecuted under the ordinances. On account of the constant thefts of government property in the American zone, the attention of all German nationals is invited to the fact that the possession of any such property is *prima facie* evidence of illegal acquisition and that the burden of proving title rests upon the possessor. Persons who have acquired such property by legal purchase should provide themselves with proper bills of sale for same.

26. PUBLIC UTILITIES. Any person who wilfully damages, in a manner likely to prejudice the security of the troops, any public utility whatever, shall be punished by a military court.

27. PUBLICATIONS. The control of the press and of all publications shall be governed by the ordinances.

28. SALUTES. Orders heretofore issued requiring all German officials in uniform to salute American and Allied officers are continued in effect.

29. Sanitation and Public Health. Instruction No. 4 of the High Commission requires German local authorities to report immediately every case of contagious or infectious disease both to the representative of the High Commission of the *Kreis* and to the military authority in the locality. The reports required by this instruction to be submitted to the military authorities will be submitted by the *Kreisarzt* to the Officer in Charge of Civil Affairs in each *Kreis*.

30. Strikes—Labor Disputes. All orders heretofore issued on this subject are revoked and such matters will be handled hereafter under the ordinances.

31. Taxation. Article 9 of the Rhineland Agreement prescribes that "No German direct taxes or duties will be payable by the High Commission, the Allied or Associated Armies or their personnel." Orders heretofore issued prohibiting the levying of wine or luxury taxes upon the troops of occupation are therefore continued in effect.

32. Traffic Regulations. All orders heretofore issued for the control of civilian traffic, *except in the Stadtkreis of Coblence*, whether street cars, automobiles, or animal-drawn vehicles, are revoked.

33. Uniforms—Unlawful Wearing of.—(a) Members of the German military forces on the active list entering the American occupied zone by authority will wear their uniforms at all times while in said zone.

(b) The attention of all German nationals is invited to the ordinance prohibiting anyone from wearing the uniform or badge of the Allied Armies or of the High Commission or any colorable imitation thereof. Returning German prisoners of war must conform strictly to this ordinance. They will not be permitted upon the return to their homes to appear in uniform. Within five (5) days after reaching their home, their uniforms must be divested of all military insignia or distinctive marks, whether of German or Allied character.

APPENDIX C

Forms, Etc., Relating to Domestic Disturbances

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No. 48

PRESIDENT'S PROCLAMATION REQUIRED BY R.S. 5300 BEFORE FEDERAL AID IS FURNISHED TO STATE CIVIL AUTHORITIES UNDER R.S. 5297

(See Chapter IV, Section II, paragraph 10.)

No. 49

PRESIDENT'S PROCLAMATION REQUIRED BY R.S. 5300 BEFORE FEDERAL AID IS FURNISHED TO UNITED STATES CIVIL AUTHORITIES UNDER R.S. 5298

(See Chapter IV, Section V, paragraph 28 *c* (2), and Section VI, paragraph 35.)

No. 50

ORDERS EMANATING FROM PRESIDENT DIRECTING EMPLOYMENT OF FEDERAL TROOPS

(Letter or telegram)

WAR DEPARTMENT

WASHINGTON

....., ...

Commanding General,
.....Corps Area, ...

1. Proclamation required by R. S. 5300 issued by President this date, involving federal action under R. S. 5298 (or 5297), in the State (or county) of ..... Time of dispersal fixed at 12 o'clock, noon, of .... day of .....

2. You will employ in accordance therewith such force of regular troops as may be necessary to deal with the situation in the affected areas.

3. If conditions require it, additional regular troops will be placed at your disposal, or such portion of the National Guard as may be needed will be called into federal service by the President.

BY ORDER OF THE SECRETARY OF WAR:

.....
Adjutant General

(See also Chapter IV, Section V, paragraph 28 *c* (3), and Section VI, paragraph 36.)

No. 51

PROPOSED FORM OF ORDER FROM CORPS AREA COMMANDER TO COMMANDER OF TROOPS

TELEGRAM

.....and the necessary medical personnel, all fully equipped for field service mounted (dismounted) for..... days (an indefinite period) with ....days' rations and forage, will proceed at once by rail (motor transport) (marching) to..... .....

Shelter will (will not) be available. The command will (will not) be in tent camp. Heavy tentage will (will not) be taken.

Field transportation (less animals) will (will not) be necessary.

These troops are called out under instructions from the President (on request of the Governor of.....) for (duty in the preservation of law and order, and) the protection of (federal) property (and agencies, and property in federal possession), and will be governed in their conduct by federal statutes and Army Regulations.

The commander of these troops will report departure by wire to these headquarters, and, upon arrival at ....., will wire (the Governor of ..... and) these headquarters. ..... will arrange for the necessary transportation.

(NOTE:—In cases where the troops are being employed under Section 5297 or 5298, and it is impracticable to furnish supplementary instructions such as those suggested in Form No. 54 below, it might be well to add the following sentence at the end of paragraph 4: "Aggressive action will not be taken in advance of the date and hour of dispersal stated in the Presidential proclamation.")

No. 52

LETTER FROM CORPS AREA COMMANDER TO UNITED STATES MARSHAL

(See Chapter IV, Section VI, paragraph 37.)

No. 53

SUPPLEMENTARY INSTRUCTIONS FROM CORPS AREA COMMANDER TO COMMANDER OF TROOPS

(See Chapter IV, Section VI, paragraph 38.)

No. 54

WARNING LETTER OR TELEGRAM TO GOVERNOR ANNOUNCING PRESIDENT'S INTENTION TO CALL NATIONAL GUARD INTO FEDERAL SERVICE

CONFIDENTIAL

War Department, Washington,

....., ...

Honorable.....,

Governor of .....,

....., ...

My Dear Governor:

I am directed by the President to advise you, confidentially, that he may be obliged to call into federal service the following National Guard organizations and National Guard personnel of your State, *viz*: (insert units designated).

The President further directs me to request that you take such steps as can be taken without publicity to expedite action upon such a call in case it becomes necessary for him to issue it.

The Commanding General, ...Corps Area, will be furnished a copy of this letter (telegram). He will be responsible for the proper induction into federal service of the National Guard forces of your State, and will be directed to communicate with you in regard thereto and to advise and assist you, so far as is expedient, in such preliminary measures as you may deem advisable.

.....

Secretary of War.

No. 55

FORM FOR PROCLAMATION CALLING NATIONAL GUARD AND NATIONAL GUARD RESERVE INTO FEDERAL SERVICE

A PROCLAMATION

BY THE PRESIDENT OF THE UNITED STATES

Whereas, the laws of the United States provide that whenever the United States is invaded or in danger of invasion from any foreign nation, or of rebellion against the authority of the Government of the United States, or the President is unable with the regular forces at his command to execute the laws of the Union, it shall be lawful for the President to call forth such number of militia of the State or of the States or Territories or of the District of Columbia as he may deem necessary to repel such invasion, suppress such rebellion, or to enable him to execute such laws, and to issue his orders for that purpose, through the governor of the respective State or Territory, or through the commanding general of the militia of the District of Columbia, from which State, Territory, or District such troops may be called, to such officers of the militia as he may think proper,

And, whereas the President is unable with the regular forces at his command to execute the laws of the Union,

Now, therefore, I ....., President of the United States, by virtue of authority vested in me by the Constitution and the laws of the United States and through the governors of the respective States and Territories and the commanding general of the militia of the District of Columbia, do call into the service of the United States as of and from the ..... day of ....., all members of the National Guard and of the National Guard Reserve of the United States, except such officers and enlisted men of the National Guard and National Guard Reserve as have been or may be specially notified by my authority that they will not be affected by this call.

The members of the National Guard and National Guard Reserve affected by this call will be concentrated at their respective armories and await the orders of the War Department.

In witness whereof, I have hereunto set my hand and caused the seal of the United States to be affixed.

Done at the City of Washington this ..... day of ....., in the year of our Lord, one thousand nine hundred and ....., and of the independence of the United States of America the one hundred and .....

.....

BY THE PRESIDENT:

.....

Secretary of State.

No. 56

FORM FOR LETTER OR TELEGRAM TO GOVERNORS CALLING NATIONAL GUARD INTO FEDERAL SERVICE

.....

Honorable.....,

Governor of .....

....., ...

My dear Governor:

Having in view the necessity of affording a more perfect protection against possible interference with postal, commercial, and military channels, and instrumentalities of the United States in the State of ....., and being unable with the regular troops available at his command to insure the faithful execution of the laws of the Union in this regard, the President has thought proper to exercise the authority vested in him by the Constitution and laws to call out the National Guard necessary for the purpose. I am, in consequence, instructed by the President to call into the service of the United States forthwith, through you, the following units of the National Guard of the State of ....., which the President desires shall be assembled at their respective armories and await the orders of the War Department. (Insert units designated.)

.....

Secretary of War.

No. 57

FORM FOR GENERAL ORDER ORDERING ORGANIZED RESERVE UNITS OR PERSONNEL INTO ACTIVE DUTY

War Department,
Washington, D. C.,

....., ...

GENERAL ORDERS
No.....

1. By direction of the President and pursuant to the authority vested in him by the Joint Resolution of Congress, approved ....., Organized Reserve units and members of the Officers' and Enlisted Reserve Corps will be ordered to active duty as follows:

a. All Organized Reserve units and all members of the Territorial Assignment Group, Officers' Reserve Corps, not assigned to Organized Reserve units will be ordered to active duty by their respective corps area or department commanders in such order and upon such dates as are deemed expedient by them in the execution of their mobilization plans.

b. All members of the Officers' and Enlisted Reserve Corps, not embraced in the above categories, will be ordered to active duty by The Adjutant General in such order and upon such dates as are deemed expedient by the War Department.

2. All directives issued by The Adjutant General or by corps area or department commanders, in compliance with the above, will state that such unit or units, and such personnel, are ordered to active duty "By direction of the President."

BY ORDER OF THE SECRETARY OF WAR:

.....

Chief of Staff.

No. 58

FORM FOR PROCLAMATION UNDER R.S. 5301

A PROCLAMATION

BY THE PRESIDENT OF THE UNITED STATES

Whereas, on the ..... day of....., nineteen hundred and ..... , the President of the United States in view of unlawful obstructions, combinations, and assemblages of persons against the authority of the Government of the United States in the city of ....., State of ..... (..... Counties of the State of .....) (State of .....) (States of .....) and in pursuance of the provisions of the laws of the United States authorizing the calling forth of the militia and the employment of the land and naval forces to suppress such obstruction to the laws and such unlawful combinations and assemblages, did, in pursuance of the laws of the United States, issue a proclamation commanding obedience to the law and desistance from taking part in any such unlawful obstructions, combinations, and assemblages, and commanding all persons engaged in or in any way connected with such unlawful obstructions, combinations, and assemblages to disperse and retire peaceably to their respective abodes on or before twelve o'clock noon on the ..... day of ....., nineteen hundred and .....; and

Whereas, the President has employed a part of the land and naval forces and has called forth the militia to suppress such combinations against the laws of the United States, and to cause the laws to be faithfully executed; and

Whereas, the said insurgents have failed to disperse by the time directed by the President, and insurrection against the Government of the United States now exists in the said City (Counties) (State) (States) and in the Counties of ....., State of ..... (State of .....) (States of .....),

Now, therefore, I, ..., President of the United States, do declare that the inhabitants of the City of ....., State of ..... (..... Counties in the State of .....) (State of .....) (States of .....) are in a state of insurrection against the United States, and that all commercial intercourse between the said City (Counties) (State) (States) and the inhabitants thereof, and the citizens of other parts of the United States is unlawful, and will remain unlawful until such insurrection shall cease or has been suppressed, and notice thereof has been duly given by proclamation; and all products, goods, chattels, wares, and merchandise coming from the said City (any of the said Counties) (said State) (any of said States) into other parts of the United States, or proceeding to the said City (any of said Counties) (said State) (any of said States) without the license and permission of the President through the Secretary of the Treasury, will, together with the vessel or vehicle containing the same, be forfeited to the United States.

In witness whereof I have hereunto set my hand and caused the seal of the United States to be affixed.

Done at the City of Washington this ..... day of ..... nineteen hundred and ....., and of the independence of the United States the one hundred and .....

BY THE PRESIDENT:

.....

Secretary of State.

APPENDIX D

Forms, Etc., Relating to Martial Law

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No. 59

DECLARATION OF MARTIAL LAW

Whereas war exists between the United States and ....., and;

Whereas the county (city) of ....., in the State of ....., is within the theater of actual hostilities which render impossible the proper and unobstructed exercise of the jurisdiction of the courts in said county (city), and;

Whereas for the due and successful prosecution of said war by the United States and for the safeguarding of the military forces of the same and for the protection of persons and property within said county (city) which the civil authorities are powerless to protect, and for the due re-establishment of law and order therein, it is necessary that military authority be asserted over all persons and property within said country, (city);

Now, therefore, I....., President of the United States, acting as Commander-in-Chief of the Armies and military forces of the United States, do hereby assume military command of and over the said county (city) of ....., and all property therein, and all civilians or other persons therein or which or who may hereafter come into said county (city) and I do hereby declare and proclaim that martial law exists therein.

And I do hereby admonish all persons in said county (city) to abstain from all words or acts which might be injurious to the military force of the United States or might embarrass or interfere with its operations or which might give aid or comfort to the enemy or which might retard the functions of the courts and I further admonish them to yield prompt and precise obedience to all orders, rules, and regulations which the local commander of said military force or any one thereto duly authorized by him may from time to time give or establish; hereby warning all persons who may do or say anything injurious to said military force or interfere with its operations or give aid or comfort to the enemy or who may violate the military orders, rules, or regulations given or established as aforesaid, that prompt and exemplary punishment will be visited upon them and that the pains and penalties consequent upon such acts or words cannot safely or properly be limited, and will not be limited to such pains and penalties as are fixed by the municipal or other law heretofore and in normal and peaceful times prevailing in said county (city), and I do warn all persons who violate the laws now in force in said county (city), that they will be arrested and detained by the military forces until their cases can be otherwise disposed of.

In testimony whereof, I have hereunto set my hand and caused the seal of the United States to be affixed.

Done in the City of Washington this ..... day of ..... in the year of our Lord ....., and of the independence of the United States the one hundred and .....

.....

BY THE PRESIDENT AND COMMANDER-IN-CHIEF OF THE ARMIES AND MILITARY FORCES OF THE UNITED STATES.

.....

Secretary of War.

No. 60

ORDER ANNOUNCING MARTIAL LAW IN THEATER OF ACTIVE MILITARY OPERATIONS

(G. O. No. 24 issued by Brigadier General Bragg at Pensacola, Fla., 20 April, 1861.)

I. All intercourse hereafter with Santa Rosa Island, Fort Pickens, or the United States fleet is strictly prohibited.

* * * * * * *

II. Martial law is declared to exist and will be rigidly enforced on all territory within five miles of the lines of this army.

No. 61

PROCLAMATION AUTHORIZING SUSPENSION OF PRIVILEGE OF WRIT OF HABEAS CORPUS

(Issued by President Lincoln, 10 May, 1861.)

A PROCLAMATION

Whereas an insurrection exists in the State of Florida by which the lives, liberty and property of loyal citizens of the United States are endangered; and

Whereas it is deemed proper that all needful measures should be taken for the protection of such citizens and all officers of the United States in the discharge of their public duties in the State aforesaid:

Now, therefore, be it known that I, Abraham Lincoln, President of the United States, do hereby direct the commander of the forces of the United States on the Florida coast to permit no person to exercise any office or authority upon the islands of Key West, the Tortugas and Santa

Rosa which may be inconsistent with the laws and Constitution of the United States, authorizing him at the same time if he shall find it necessary to suspend there the (privilege of the) writ of habeas corpus and to remove from the vicinity of the United States fortresses all dangerous or suspected persons.

In witness whereof I have hereunto set my hand and caused the seal of the United States to be affixed.

Done at the city of Washington this 10th day of May, A. D. 1861, and of the independence of the United States the eighty-fifth.

ABRAHAM LINCOLN.

By the President:

WILLIAM H. SEWARD,
Secretary of State.

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